

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 9, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05HD-258

Island of Hawaii

Approval in Principle of Direct Lease to Hospice of Hilo, Waiakea, South Hilo,  
Hawaii, Tax Map Keys: 3<sup>rd</sup>/2-4-01: 24

APPLICANT:

Hospice of Hilo, a Hawaii non-profit corporation whose business and mailing address is  
1266 Waianuenue Avenue, Hilo, Hawaii 96720

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended

LOCATION:

Portion of Government land situated at Waiakea, South Hilo, Hawaii, identified by Tax  
Map Keys: 3<sup>rd</sup>/2-4-01: 24, as shown on the attached map labeled Exhibit A.

AREA:

39.456 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Residential (RS-10)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Inpatient Hospice Facility and Related Uses.

LEASE TERM:

Sixty Five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

To be determined by the Board at a subsequent Land Board meeting after applicant satisfactorily complies with Chapter 343, HRS, and the Board formally approves the issuance of a direct Lease to Hospice of Hilo for the subject lands.

RENTAL REOPENINGS:

To be determined by the Board at a subsequent Land Board meeting after applicant satisfactorily complies with Chapter 343, HRS, and the Board formally approves the issuance of a direct Lease to Hospice of Hilo for the subject lands.

PERFORMANCE BOND:

To be determined by the Board at a subsequent Land Board meeting after applicant satisfactorily complies with Chapter 343, HRS, and the Board formally approves the issuance of a direct Lease to Hospice of Hilo for the subject lands.

PROPERTY CHARACTERISTICS:

Utilities - All utilities are available  
Slope - Gentle

Legal access to property - Legal access to the property off of Mohouli Street.

Subdivision - Staff has verified that the subject property is a legally subdivided lot.

Encumbrances - The lease will be subject to any and all pre-existing easements.

## CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This is a request for the Board's approval in principle of a lease to the Hospice of Hilo of an approximate 3 acres of TMK: 2-4-01: 24 and authorization for the Hospice of Hilo to proceed with compliance with Chapter 343, HRS.

### DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

### APPLICANT REQUIREMENTS:

Hospice of Hilo shall be required to:

- 1) Prepare and process, at its own cost, all necessary studies and documentation for compliance with Chapter 343, HRS, as amended;
- 2) Cooperate and coordinate all studies and documentation with the University of Hawaii and its efforts on the remaining portions of TMK: 3<sup>rd</sup>/ 2-4-01: 24;

### REMARKS:

The subject property is currently vacant and unencumbered. The parcel borders the Wailoa Flood Control drainage way and is heavily covered with what appears to be non-native trees and vegetation. The remaining bordering properties are primarily residential in nature except for our General Lease S-4004 to the Christ Lutheran Church.

Although, the parcel itself is zoned residential, it should be noted that some of the fee residential parcels along Mohouli Street have been rezoned to commercial. The proposed use by the Hospice of Hilo would be considered a higher use than residential and would be consistent with that trend. However, based on the current zoning and the proposed use, the Hospice of Hilo would need to obtain a special use permit from the County of Hawaii, Planning Commission.

Based on the Board's approval in January 1996, the department issued General Lease No. S-5513 to Hospice of Hilo off of Waianuenue Avenue. Since the issuance of the lease, Hospice of Hilo successfully completed and has been operating out of its new facility since 1998. Hospice of Hilo is now requesting consideration for an expansion of their services to a new inpatient facility on the parcel that is the subject of this submittal (See request letter dated September 30, 2005 attached as Exhibit B). Hospice of Hilo is prepared to proceed with the necessary compliance with Chapter 343, HRS, but would like the Board's approval in principle prior to committing the time and costs associated with compliance.

Hospice of Hilo currently pays \$730 per year for General Lease No. S-5513 that was based on the Board's approval of rent at 25% of fair market value. At that time, the rationale on non-profit leases was that the Office of Hawaiian Affairs would receive their 20% of fair market and the additional 5% would cover administrative costs. Since that time, the Department of the Attorney General has opined that such rent arrangements are not legal and pursuant to statute, the Office of Hawaiian Affairs should only receive 20% of what is actually collected. As such, staff discontinued proposing such rent arrangements on non-profit leases.

Although Hospice of Hilo would obviously like rent to be as low as possible and qualifies for nominal rent pursuant to statute, it is willing to proceed with compliance with Chapter 343, HRS, and is agreeable to paying a reasonable nominal rent for this new lease. Upon satisfactory compliance with Chapter 343, HRS, Hospice of Hilo will provide the Board with detailed plans for their new facility and a proposal for what it can justify a reasonable nominal rent as part of the subsequent submittal to the Board for its new direct lease.

The University of Hawaii is also considering a request for the same parcel for the purposes of facilities associated with their recently approved School of Pharmacy in Hilo. The University of Hawaii plans to present their plan to the Board of Regents for approval sometime early next year before officially submitting a request to DLNR. Staff will submit the UH's request to the Board under a separate submittal pending Board of Regent's approval.

However, based on discussions with the Hospice of Hilo, the University of Hawaii has no objections to a removal of 3 acres from the larger parcel. The University of Hawaii feels that such a facility adjacent to the campus may provide cooperative opportunities involving university students.

Hospice of Hilo has been a model lessee since the commencement of its other lease and has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No agency or community comments were solicited in that this is purely an approval in principle and the Hospice of Hilo will proceed to the necessary Chapter 343, HRS compliance that will incorporate the agency and community review and comment.

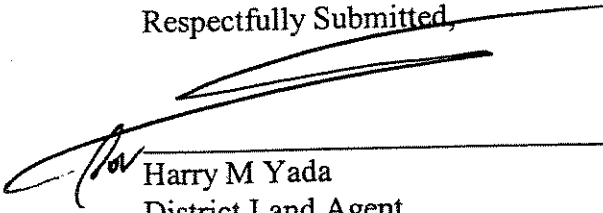
#### RECOMMENDATION:

That the Board:

1. Approve of, in principle, a new direct lease to Hospice of Hilo, subject to the following:

- a. At its own cost, Hospice of Hilo shall pursue satisfactory compliance with Chapter 343, HRS and obtain a FONSI within 12 months of the Board's approval;
  - b. Should Hospice of Hilo fail to obtain satisfactory compliance with Chapter 343, HRS, within 12 months, the Board's approval shall be considered rescinded;
  - c. Hospice of Hilo acknowledges the following:
    - i. All costs associated with the necessary compliance with Chapter 343, HRS, shall be borne by Hospice of Hilo;
    - ii. That this action is an approval in principle, does not provide any assurance of a direct lease and such approval of a direct lease shall be subject to consideration by Board under separate action after satisfactory compliance with Chapter 343, HRS;
    - iii. That there has been no representations or assurances made regarding the annual rent to be paid under a direct lease. Hospice of Hilo agrees to provide a proposal for rent and justification for such rent in connection with the Board's final consideration of a direct lease after satisfactory compliance with Chapter 343, HRS;
  - d. Hospice of Hilo shall consult and cooperate with the University of Hawaii in the Chapter 343, HRS compliance and the configuration of the lot to be subdivided for its purposes.
2. Authorize the issuance of a right-of-entry to Hospice of Hilo for the purposes of the necessary studies and surveys in connection with Chapter 343, HRS compliance.

Respectfully Submitted,

  
Harry M Yada  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

**REDUCED/NOT TO  
SCALE**

16

[illegible]

DEPARTMENT OF TAXATION,  
TAXATION MAPS BUREAU  
STATE OF NEW YORK

## TAX MAP

10	7	2
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IN THE UNIVERSITY OF MICHIGAN, FOR  
REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

WAI'AKEA CANE LOTS, WAI'AKEA, SOUTH HILO, HAWAII

145

# EXHIBIT A



SidneyFuke, Planning Consultant

100 Pauahi Street, Suite 212 • Hilo, Hawaii 96720  
Telephone: (808) 969-1522 • Fax: (808) 969-7996

• Planning • Variance • Zoning  
• Subdivision • Land Use Permits  
• Environmental Reports

September 30, 2005

2005 OCT -31P 1:05

RECEIVED  
LAND DIVISION  
HILO, HAWAII

Mr. Harry Yada, Land Administrator  
Hawaii District – State of Hawaii  
Department of Land and Natural Resources  
P.O. Box 936  
Hilo, HI 96721-0936

Dear Mr. Yada:

**Subject: State Lease Request – Hospice of Hilo**  
**TMK: 2-4-01: portion 24**

This is to follow up on our intermittent discussions on the subject matter, most recently on September 19, 2005.

As you know, I was the former president of Hospice of Hilo (HOH) and now serve as an advisory member of this organization. I am also a member of its Ad Hoc Committee for the General Inpatient Facility. It is on behalf of this organization - and also as its planner - that I am making this request.

HOH wishes to build and operate a twelve (12) to eighteen (18) bed general inpatient facility for the Big Island community. HOH entered into a partnership with the Hilo Medical Center to provide two (2) residential beds for its clients. Since its inception nearly three (3) years ago, the rooms are running in excess of 90% occupancy. In 2001, HOH commissioned a needs assessment study. That study confirmed that there already was a demand for at least a 12-bed facility due to population increases and especially increased in the elderly age group. We can anticipate this trend to only continue.

Pursuant to that objective, HOH has been searching for land that can accommodate this need. After a year of search, the Committee felt that the subject property, identified by TMK: 2-4-01: portion of 24 (see attached map), located at the end of Kapiolani Street and directly across of the Christ Lutheran Church would be quite suitable for this effort.


Because HOH is a non-profit organization with a limited budget, understandably it would like to minimize its up front expenses. In that regard, if possible, HOH would appreciate your and/or the Board's formal comments on this proposal; and if an approval in "principle" could be achieved, HOH stands ready to commission the required Environmental Assessment and submit a formal request of this site to the Board.

**EXHIBIT B**

Mr. Harry Yada  
September 30, 2005  
Page 2

Please note that the subject property consists of 39+ acres. However, HOH would need at least 5 acres for its purposes, particularly the makai area and closest to Kapiolani Road. Please note that HOH would be willing to design its project such that the balance of the property could be accessed and used for compatible uses.

We look forward to hearing from you at your earliest opportunity. Should you have questions on this matter, please feel free to contact me or Ms. Brenda Ho, Executive Director of HOH at 969-1733. Thank you very much!

Sincerely,  
  
SIDNEY M. FUCE

Enclosure  
Copy - Ms. Brenda Ho w/ enclosure



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 9, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:

Island of Hawaii

Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Recreational  
Non-Vehicular Trail Purposes to the County of Hawaii, Kamuela, South Kohala,  
Hawaii  
Tax Map Keys: 3<sup>rd</sup>/ 6-6-03: 06

APPLICANT:

County of Hawaii, whose business and mailing address is 25 Aupuni Street, Room 215,  
Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimea, South Kohala, Hawaii, identified by Tax  
Map Keys: 3<sup>rd</sup>/ 6-6-03: 06, as shown on the attached map labeled Exhibit A.

EASEMENT AREAS:

The trail will vary from 5 to 10 feet with 2 to 5 foot shoulders for improved pedestrian  
trails. The exact easement area will be determined by survey.

ENCUMBRANCES:

**Unencumbered.** The property was formerly under Governor's Executive Order No.  
2024 to the University of Hawaii as an Experiment Station. By way of a prior action, the  
Board approved a recommendation to the Governor of canceling Executive Order No.  
2024 and a fee conveyance of the subject property to the University of Hawaii by way of  
Land Patent Grant. As the fee conveyance has not been completed, the property is

currently considered as unencumbered. The future of the disposition to the University of Hawaii is discussed further in the Remarks section of this submittal.

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

**ZONING:**

State Land Use District: Agriculture  
County of Hawaii CZO: Agriculture (A-1a) one acre

**CURRENT USE STATUS:**

See Zoning Section Above.

**CHARACTER OF USE:**

Recreational, Non-Vehicular Trail Purposes.

**COMMENCEMENT DATE:**

To be determined by the Chairperson.

**CONSIDERATION:**

Gratis.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on February 23, 2004 with a finding of no significant impact (FONSI). The 30 day challenge period ended March 24, 2004.

**APPLICANT REQUIREMENTS:**

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The County of Hawaii, Department of Parks and Recreation, in collaboration with the Waimea Preservation Association (formerly known as Main Street), has received funding to commence development of the Waimea Trails and Greenways Project. The proposed project involves a 4.5 mile long alternative transportation corridor for bicycles and pedestrian use through the town of Waimea.

The County has received funding for the initial phase of the project that will include acquisition of right-of-ways and development of an approximate one mile section of the trail from Lindsey Road to the Sandalwood Subdivision. Although construction funding has not yet been received for the remaining phases, the County is requesting the easement conveyance of the trail alignment along Waikoloa Stream that traverse State owned lands between the area of the Church Row and Lindsey Road in interest of preserving the alignment and protect it from future development. At its meeting of November 19, 2004, the Board approved various easements across State owned lands and a quitclaim for a paper road right-of-way in connection with the trails project. Additionally, at that same meeting, the Board approved the set aside of a 17.6 acre parcel of land currently under lease for pasture near the area of the Sandalwood Subdivision. This parcel is planned as a trailhead for use as public parking and rest area for trail users.

The subject parcel identified under this submittal was left out of the prior action due to it being under Executive Order to the University of Hawaii. The Department of the Attorney General has previously indicated that the University of Hawaii should be responsible for the issuance of any easements under Executive Order.

However, at its meeting of June 28, 2000, the Board had previously approved the cancellation of Governor's Executive Order No. 2024 to the University of Hawaii and fee conveyance of the subject property by Land Patent Grant. By amendment, the approval included a reverter clause if the UH does not provide the Board with a long range plan for use of the property. Such a plan was never submitted by the deadline of July 28, 2003. The cancellation of Governor's Executive Order No. 2024 was completed with the issuance of Governor's Executive Order No. 4115 that was executed on June 28, 2005. However, staff has not proceeded with the fee conveyance due to the lack of a long range plan and staff's reservations on a real need for the property by the UH. The property is currently be occupied by Kanu O Ka' Aina Charter School under a temporary agreement with the University of Hawaii.

The subject property is located in the middle of the urban area of Kamuela and staff questions whether this is an appropriate location of an agricultural experiment station. Staff had originally referred the charter school request to the UH due to staff being aware that the property was not being utilized at that time. Staff was very concerned at that time over the waste of public resources by the UH and as such supported the Board's inclusion

of the requirement of a long range plan for the property. As such staff cannot support a fee conveyance of the property pursuant to the Board's prior action and will be bringing the issue back to the Board at a later date. In the interim, staff has no objection to the charter school remaining on the property.

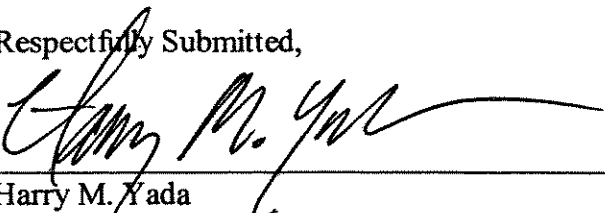
In summary, the subject property is currently unencumbered and due to the County's urgency to proceed with their trails project, staff is submitting this request for the issuance of an easement. Any future disposition of the property would be made subject to this easement to the County for its Waimea Trails and Greenways project. The County planned trail alignment and design has been reviewed by both the UH and the Kanu O Ka' Aina Charter School with no objections.

No agency or community comments were solicited as the County of Hawaii did complete an Environmental Assessment in compliance with Chapter 343, HRS, as amended.

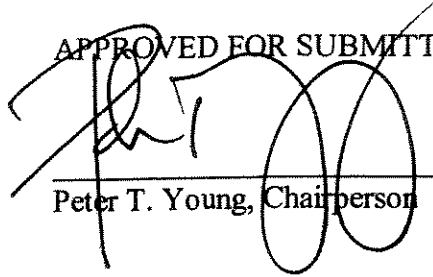
**RECOMMENDATION:** That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the County of Hawaii covering the subject property for recreational, non-vehicular trail purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current perpetual easement document form for government agencies, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Harry M. Yada  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

REDUCED/NOT  
SALE

TAX MAP		SECTION	
ZONE	SEC	PLAT	
6	6	03	
CONTAINING			PARCELS
SCALE IN - 200'			7

**SUBJECT TO CHANGE**

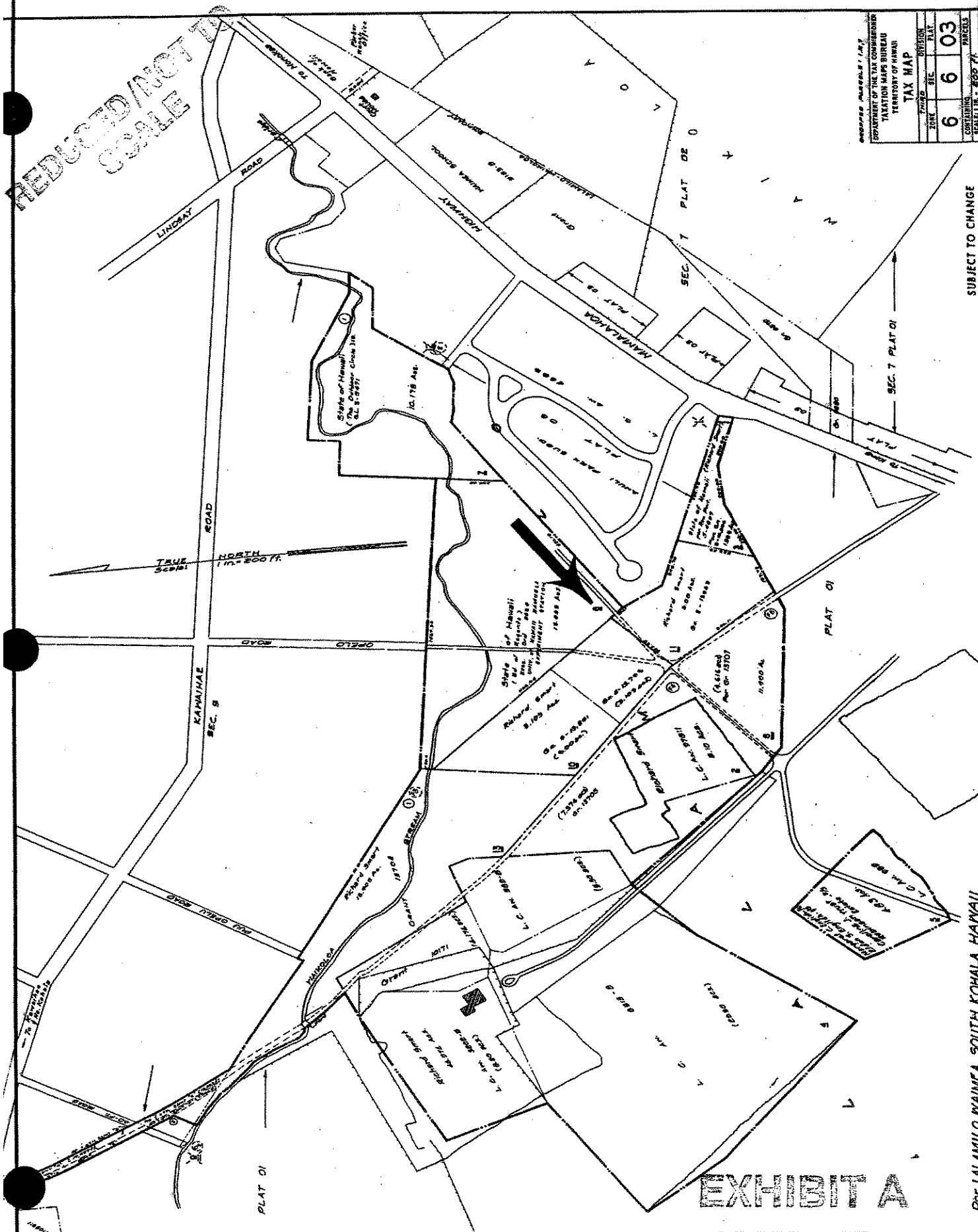


EXHIBIT A

PO BOX 1414 MILU WAINA SOUTH KOHALA HAWAII

WD. NO. 8475 (DENSED August 1958)  
SOURCE: SURVEY CAPT. MAP BY S. HARVEY WRIGHT  
TALLS  
DATE: August 10, 1958

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 9, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:05HD-172

Hawaii

Final Approval of the Acquisition of Private Lands and Set  
Aside to County of Hawaii for Estuarine Land Conservation  
and Public Recreation Purposes, Kau, Island of Hawaii, Tax  
Map Key: (3) 9-5-14:02-07, 27 & 52-59

APPLICANT AGENCY:

County of Hawaii

PRIVATE LANDOWNER:

Current landowner is Honuapo Bay Ranch Estates, LP (HBRE) a  
California limited partnership whose business and mailing address  
is 330 Primrose Road, Suite 210, Burlingame, California 94010.

However, Trust for Public Land (TPL), a foreign nonprofit  
corporation, whose business address is 116 New Montgomery Street,  
4<sup>th</sup> Floor, San Francisco, California 94105, entered into an Option  
Agreement dated May 27, 2005 with the current owners. Conveyance  
of the property to TPL is expected by December 15, 2005.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as  
amended, and Chapter 101, HRS, as may be necessary.

LOCATION:

Privately-owned lands situated at Kau, Island of Hawaii,  
identified by Tax Map Key: (3) 9-5-14:02-07, 27 & 52-59, as shown  
on the attached map labeled Exhibit A.

AREA:

225.493 acres, more or less.

ZONING:

Third Tax Division Tax Map Key	State Land Use District	County of Hawaii CZO
9-5-14:02	Agriculture	A-20a, Agricultural
03	Agriculture	A-20a, Agricultural
04	Agriculture	A-20a, Agricultural
05	Agriculture	A-20a, Agricultural
06	Agriculture	A-20a, Agricultural
07	Agriculture/ Conservation	A-20a, Agricultural/ Open Districts
27	Agriculture	Open District
52	Agriculture	Open District
53	Conservation	Open District
54	Conservation	Open District
55	Conservation	Open District
56	Agriculture	A-20a, Agricultural
57	Conservation	Open District
58	Conservation	Open District
59	Conservation	Open District

CURRENT USE:

Vacant and unimproved.

CONSIDERATION:

The fair market value of the subject site was determined by an independent appraiser to be \$3,500,000. The appraisal report has been reviewed and approved by the Chairperson. Nonetheless, TPL has agreed to convey the subject site for \$3,232,367.

PURPOSE:

Estuarine land conservation and public recreation purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required.

Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

Although portions of the site are in the State Land Use Conservation District, to date a CDUA has not been submitted.

APPLICANT REQUIREMENTS:

Applicant has been required to:

- 1) Provide an appraisal report to determine the value of the properties to be acquired, at no cost to the State;
- 2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at no cost to the State;
- 3) Obtain a title report for the privately-owned property at no cost to the State and subject to review and approval by the Department;
- 4) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

The Department of Land and Natural Resources (DLNR), Land Division is requesting the Board of Land and Natural Resources' (BLNR) final approval of the acquisition of ±225.493 acres of land located in Ka'u, island of Hawaii. The subject site is commonly referred to as the Honu`apo Estuary and is further identified by tax map key as TMK (3) 9-5-14:02-07, 27, & 52-59 (Exhibit A).

At its meeting of August 26, 2005, under agenda item D-7, the BLNR approved an after-the-fact request to apply for a Conservation and Estuarine Land Conservation Program (CELCP) grant from National Oceanic & Atmospheric Administration (NOAA). The purpose of this grant was for the acquisition of the ±225.493-acre subject site, which the BLNR approved in principle.

Subsequently, DLNR accepted an award in the amount of \$1,464,735 from NOAA for the acquisition of Honu`apo Estuary.

Under this same agenda item, the BLNR approved in principle the acquisition of private lands for set aside to the County of Hawaii for coastal and estuarine land conservation. Accordingly, presented herein for your evaluation are the results and evaluations of applicant requirements as identified in the previous section:

- 1) Appraisal Report. Hallstrom Group, LP (appraiser) was contracted by Trust for Public Land (TPL) to prepare an appraisal report determining the fair market value of the subject 225.493-acre site identified as TMKs (3) 9-5-14:02-07, 27, & 52-59. Based on the self-contained appraisal report dated July 9, 2005, the appraiser opined the fair market value of the subject site to be \$3,500,000, with an effective date of value of June 15, 2005. Said appraisal report was reviewed by the DLNR and accepted for acquisition purposes on October



25, 2005.

Subsequent to the State's review, TPL indicated its desire to reserve to the current landowner a 20-foot wide water/utility easement as depicted in Exhibit B.

Considering the proposed size and location of this reservation, staff is of the opinion that any impact on value is not likely to be significant. However, staff notes that this proposed reservation and any resulting impact on value is not addressed in the aforementioned appraisal report.

- 2) Survey Report. TPL contracted R.M. Towill Corporation to provide the required private survey services. Appropriately, assistance from Department of Accounting and General Services, Survey Division (DAGS-Survey) was requested. However, because information required by DAGS-Survey was only received on November 16, 2005, DAGS-Survey has not completed their review of the private survey or the preparations of appropriate CSF maps and descriptions.

Accordingly, acceptance of this land dedication remains subject to the review and approval of DAGS-Survey.

- 3) Title Report. Title Guaranty of Hawaii, Inc. was contracted by TPL to prepare preliminary title reports for the subject 15 parcels. Pursuant to title reports dated October 20 and 21, 2005 the current owner of record is Honuapo Bay Ranch Estates, LP (HBRE). Nonetheless, TPL has agreed to acquire said land from HBRE under terms and conditions as summarized in a Sales Agreement dated May 27, 2005, as amended (Exhibit C). TPL's acquisition of the subject site is expected to close on December 15, 2005.

The Office of the Attorney General, Land Division and County of Hawaii have reviewed all encumbrances identified in these title reports. Based on these reviews and with TPL's concurrence, a list of acceptable encumbrances is attached for your review (Exhibit D). TPL shall warrant title to the property subject only to the encumbrances identified on Exhibit D. Moreover, these encumbrances shall be made a part of an Agreement of Sale and the warranty deed conveying title.

- 4) Phase I Environmental Site Assessment (ESA). TPL has provided a Phase I ESA of the subject site dated July 2005 and prepared by Walker Consultants, Ltd. (WCL) of Murrieta, California. Based on field observations, interviews and research of readily-available data and records, WCL concluded that "In conformance with the scope and limitations of ASTM Practice E 1527, WCL has preformed a Phase I Environmental Site Assessment of the Honu'apo Parcel, Kau District, Hawaii island, TMK Nos. 9-5-014:002-:007, :027 & :052-:059. This assessment revealed no evidence of recognized environmental conditions in connection with the Property."

However, staff makes note of the following:

- i) An unsigned July 2000 draft Phase I ESA prepared by J R Herold and Associates covering TMKs (3) 9-5-14:06, 07, 29 and 38 makes note of "Observation of the former Hutchinson Sugar Plantation northwest of the project site, across State Highway 11 (Hawaii Belt Road) indicated the presence of a heavy, black, petroleum-like liquid in a subterranean structure. There is potential that this substance could have reached groundwater and migrated to the subject property; however, due to the viscous nature of the contamination, and the distance to the subject property, it is our opinion that this material has not impacted the subject site.";

This July 2000 draft Phase I was never signed because the contracting party reportedly waited two years before requesting finalization. Although previously paid in full, considering the lapse in time J R Herold and Associates required payment for an entirely new study to be performed for report finalization. Consequently, a final report was reportedly never ordered.

Whereas it was reported by the contracting party that a final report dated 2000 would closely resemble the draft report with the exception of grammatical corrections, staff considered the report findings reliable.

- ii) Standard Oil Company leased a parcel in the immediate vicinity of the subject from July 1, 1946 through June 30, 1972, for the purpose of storage and transport of petroleum products;
- iii) The subject area was inundated by tsunamis in 1946, 1957, 1960 and 1975. The subject area is also situated in a low-lying coastal area with ground and surface water conditions that may be susceptible to tidal and wave surge fluctuations. Consequently, the WCL Phase I did not address how these occurrences or conditions may have been affected by the two previous items and the subject site; and
- iv) Based on its research, TPL is of the understanding that migration was NOT an issue for either of the two off-site items mentioned above.
- v) Nonetheless, above items i, ii and iii are not identified or addressed in the July 2005 WCL Phase I.

Subject to BLNR approval, TPL has agreed to convey the subject

lands to the State of Hawaii for a consideration of \$3,232,367 under the terms and conditions set forth in an Agreement of Sale and Warranty Deed, copies of which are attached as Exhibits E and F, respectively. Whereas TPL is not agreeable to the State's standard warranty deed, the warranty deed attached reflects agreed upon amendments to the standard warranty deed.

Funding for this proposed acquisition is as follows:

CELCP NOAA award	\$1,464,735
DLNR CIP*	1,000,000
County of Hawaii**	500,000
LWCF grant***	267,632
Total Funding	\$3,232,367

\* Appropriation authorized by Act 178, SLH 2005, Item K-6

\*\* Authorized by County Bill 53, 2005

\*\*\* Land Water Conservation Fund grant applied for by County of Hawaii Parks & Recreation. Approval is pending.

Subject to BLNR and AG approval of the proposed acquisition, these lands will be set aside to the County of Hawaii (County) for estuary conservation and an addition to its existing Whittington Park for public recreation purposes.

Whereas DLNR has applied for CELCP funding from NOAA for the acquisition of Honu`apo Estuary, acceptance of this award has obligated DLNR to certain terms and conditions. Accordingly, in conjunction with set aside to the County, the County has agreed in concept to entering into a Memorandum of Agreement (MOA) with DLNR by which the County accepts the conditions of the NOAA grant and indemnifies the DLNR for any breach of these conditions.

Comments pertaining to the proposed acquisition and set aside to County of Hawaii were solicited from Department of Hawaiian Home Lands (DHHL), DLNR State Parks Division (SP), DLNR Office of Conservation and Coastal Land (OCCL), County of Hawaii Planning Department (CHPD) and Office of Hawaiian Affairs (OHA).

DHHL, SP, OCCL, CHPD provided no comments or objections. OHA expressed its support for this proposal and "commends the State and County on their foresight to preserve this culturally and naturally important property."

RECOMMENDATION: That the Board:

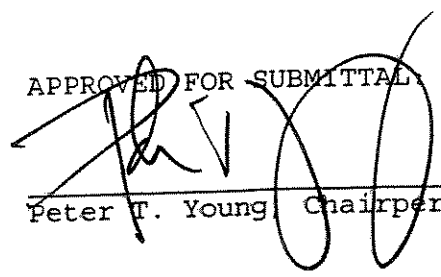
1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
  - A. The terms and conditions of the attached Agreement of Sale document;
  - B. The terms and conditions of the attached deed document

- form, as may be amended from time to time;
- C. Review and approval by the Department of the Attorney General;
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Delegate to the Chairperson the authority to approve of a Memorandum of Agreement between the Department and the County of Hawaii subject further to:
- A. Review and approval by the Department of the Attorney General; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

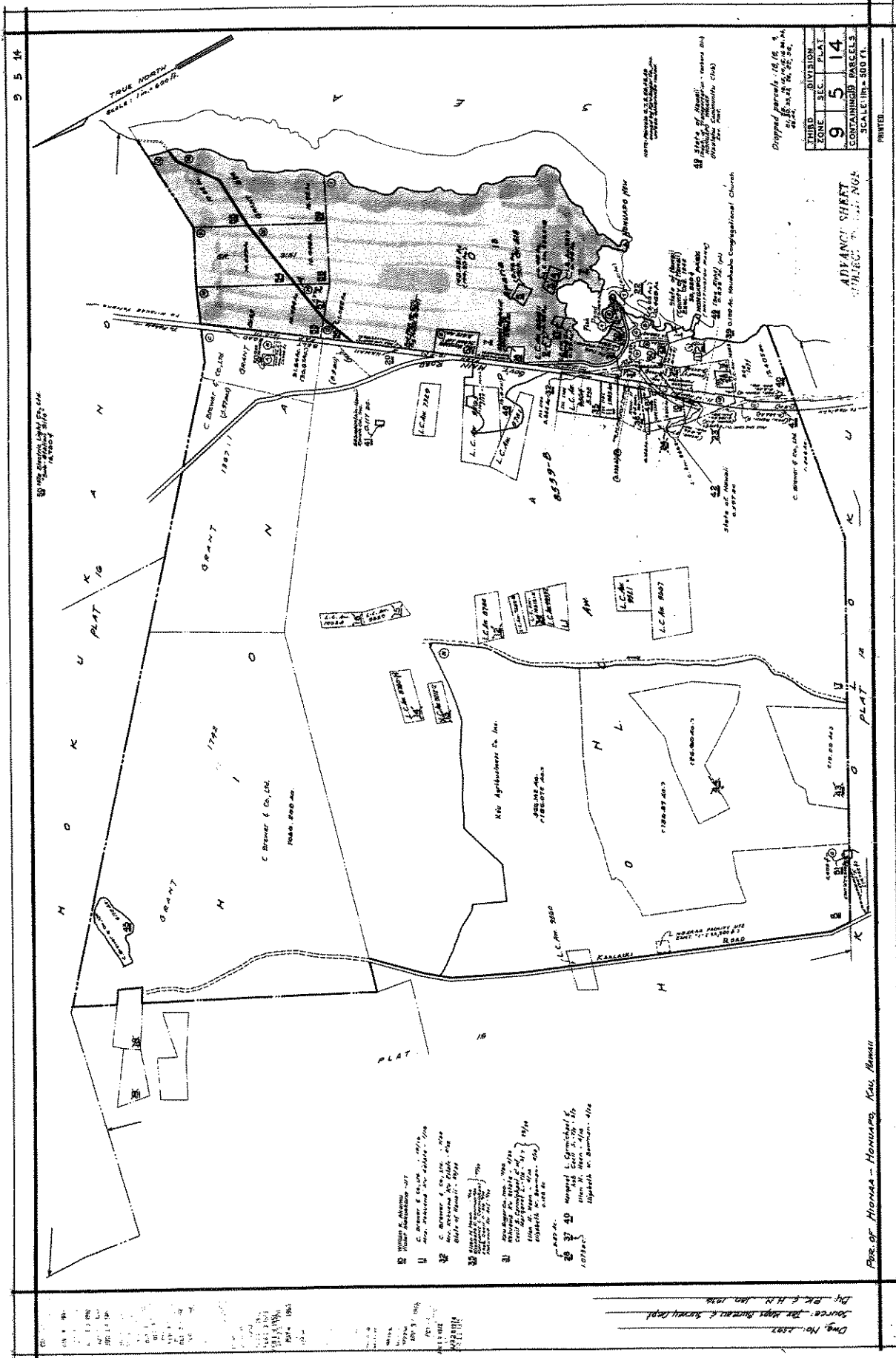
  
Gavin Chun  
Project Development Specialist

APPROVED FOR SUBMITTAL

  
Peter T. Young, Chairperson

Orig. No. 2592  
Source: Tax Maps Bureau & Survey Dept.  
By: RC & HN Jan 1936

**EXHIBIT "A"**



FOR. OF HIONAA - HONUAUO, KAU, HAWAII

Designation of Easements C and D  
Affecting Lot 1, Being a Portion of  
Royal Patent 7049,  
Land Commission Award 8559-B,  
Apana 13 to Wm. C. Lunalilo  
(Certificate of Boundaries No. 74)  
At Honuapo, Ka'u, Island of Hawaii, Hawaii  
Tax Map Key: (3) 9-5-14: 7

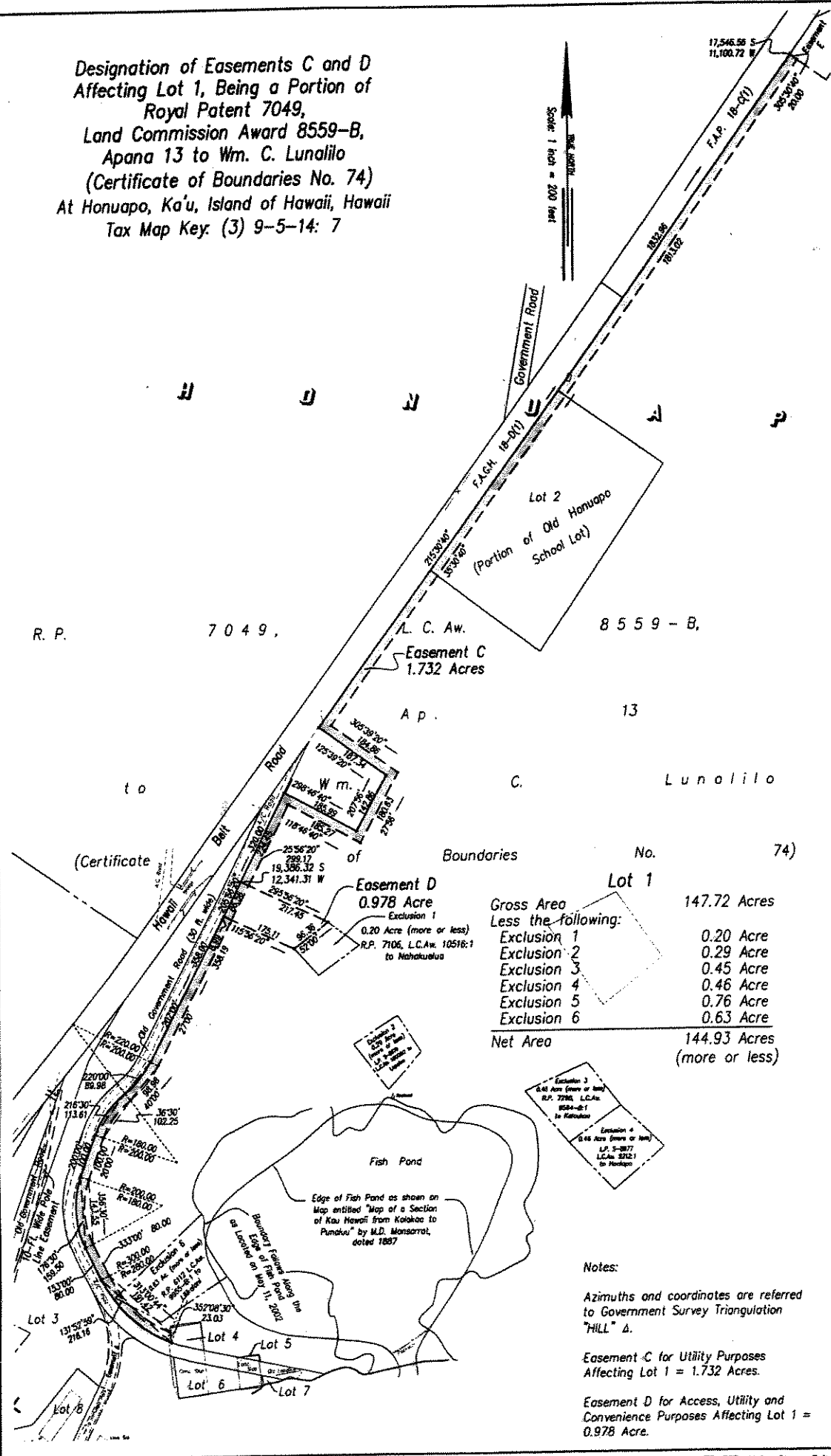


EXHIBIT "B"

October 13, 2005

Honuapo Bay Ranch Estates, LP  
330 Primrose Road, Suite 210  
Burlingame, CA 94010-4026  
Attn: Mark D. Lester, President of Landco,  
A Real Estate Services Corporation, its general partner

RE: SECOND AMENDMENT TO OPTION AGREEMENT  
Honu'apo Bay Ranch Estates Property

Dear Mr. Lester:

We refer to that certain Option Agreement dated May 27, 2005 (the "Agreement") between HONUAPPO BAY RANCH ESTATES, LP, a California limited partnership ("Seller") and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Buyer"), as amended August 2, 2005, pertaining to that certain real property described therein (the "Agreement"). This letter will serve as the second amendment to the Agreement (the "Second Amendment"). Unless otherwise expressly defined in this letter, all capitalized terms used herein shall have the meanings given to them in the Agreement.

In consideration of the mutual promises contained herein, the Parties agree to amend the Agreement as set forth below:

1. Section 1.1 of the Agreement is amended to provide that within three (3) days of the Effective Date of this Second Amendment, Buyer shall increase the Deposit to Sixty Thousand Dollars (\$60,000) by depositing with Escrow Holder the sum of Fifty Thousand Dollars (\$50,000) of which Twenty Five Thousand Dollars (\$25,000.00) shall be released to the Seller by escrow holder upon written approval of the Appraisal by the State of Hawaii, but in no event later than October 28, 2005. The remaining Twenty Five Thousand Dollars (\$25,000.00) shall be released to Seller on October 30, 2005.

2. Section 2.1 of the Agreement is amended to provide that the Purchase Price shall be Three Million Four Hundred Thousand Dollars (\$3,400,000.00).

3. Section 4.8 of the Agreement is hereby deleted.

4. Section 4.12 is added to the Agreement to provide as follows:

"Assignment of Rights to Lot E. At the Close of Escrow Seller shall partially assign to Buyer its rights under Section 2 of the Addendum to

EXHIBIT "C"

DROA dated August 2, 2005 between Seller and Richard Alderson, whereby Richard Alderson agrees with Seller upon the completion of the PCRS to donate "Parcel E" and the Whittington Park Access Road shown as 'Road A', as shown on the June 2005 PCRS Planning Map to the County of Hawaii."

5. Except for Seller's updating of the condition of title by recordation of correction deed(s) to include within the Property those parcels previously identified as "Inclusions", Buyer's right to review and approve or object to any resulting new title exceptions and the authorization of the exercise of the Option by Buyer's Board of Directors which is scheduled to occur on October 25, 2005, Buyer acknowledges that it has completed its due diligence for the Property and hereby approves the condition thereof.
6. Except as amended by this Second Amendment, the Agreement remains unchanged and is in all respects ratified and affirmed.

If acceptable please sign a copy of this Second Amendment, return it to me and telecopy a copy of the fully executed Second Amendment to me at (415) 442-0487. Thank you for your cooperation.

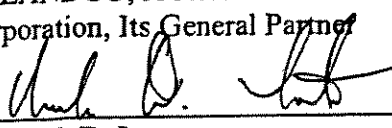
Very truly yours,  
THE TRUST FOR PUBLIC LAND



Brian R. Kirchoff  
Regional Counsel

cc: Joshua Stanbro

**HONUPO BAY RANCH ESTATES,**  
LP, a California limited partnership  
By LANDCO, A Real Estate Services  
Corporation, Its General Partner

  
By: Mark D. Lester  
Title: President

Date: 10/18/05





Western Regional Office  
New Montgomery St.  
Third Floor  
San Francisco, CA  
94104  
Tel: 415.775.3000  
Fax: 415.775.0541  
www.rpl.org

August 2, 2005

Honuapo Bay Ranch Estates, LP  
330 Primrose Road, Suite 210  
Burlingame, CA 94010-4026  
Attn: Mark D. Lester, President of Landco,  
A Real Estate Services Corporation, its general partner

RE: FIRST AMENDMENT TO OPTION AGREEMENT  
Honu'apo Bay Ranch Estates Property

Dear Mr. Lester:

We refer to that certain Option Agreement dated May 27, 2005 (the "Agreement") between HONUAPPO BAY RANCH ESTATES, LP, a California limited partnership ("Seller") and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Buyer"), pertaining to that certain real property described therein (the "Agreement"). This letter will serve as the first amendment to the Agreement (the "First Amendment"). Unless otherwise expressly defined in this letter, all capitalized terms used herein shall have the meanings given to them in the Agreement.

In consideration of the mutual promises contained herein, the Parties agree to amend the Agreement as set forth below:

1. Section 2.3 of the Agreement is amended to read as follows:

2.3 Appraisal. Buyer will contract for a complete, self-contained, written appraisal of the fair market value of the Property ("FMV"), assuming its highest and best use, to be prepared by a State-licensed, MAI appraiser, familiar with state and federal land appraisal standards (the "Appraisal"). Buyer will provide Seller a copy of the Appraisal within five (5) business days of its completion. Buyer and Seller shall have twenty (20) days from the receipt of the Appraisal to review the Appraisal and to determine whether or not to accept the Appraisal. If either Party seeks to reject the Appraisal, that Party shall provide written notice of the rejection to the other Party within said twenty (20) day period. If Seller rejects the Appraisal, then, as a condition of terminating the Option, in addition to the written notice within said twenty (20) day period, Seller shall reimburse Buyer for one-half (1/2) the cost of the Appraisal up to a maximum cost of Two Thousand Five Hundred Dollars (\$2,500.00). Upon written notice to the other Party of rejection of the Appraisal, and, in the case of Seller's rejection, reimbursement by Seller to Buyer of one-half (1/2) the cost of the Appraisal, as in this Section above, and Escrow Holder's return of the Deposit to Buyer, then this Agreement shall be terminated and be of no further force or effect. If either

Party fails to notify the other Party of its rejection of the Appraisal within said twenty (20) day period, then that Party shall be deemed to have approved the Appraisal.

2. Except as amended by this First Amendment, the Agreement remains unchanged, ~~and is in all respects ratified and affirmed.~~ ML

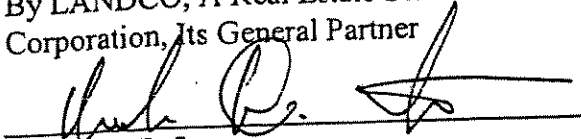
Please sign both enclosed originals and return one fully-signed original of this First Amendment to me. Thank you for your cooperation.

Very truly yours,  
THE TRUST FOR PUBLIC LAND

  
Brian R. Kirchoff  
Regional Counsel

cc: Joshua Stanbro

HONUPO BAY RANCH ESTATES,  
LP, a California limited partnership  
By LANDCO, A Real Estate Services  
Corporation, Its General Partner

  
By: Mark D. Lester  
Title: President

Date: 8/8/2005

## OPTION AGREEMENT

This is an Agreement, dated May 27, 2005, (the "Agreement") between **HONUPO BAY RANCH ESTATES, LP**, a California limited partnership ("Seller") and **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation ("Buyer").

### RECITALS

A. The addresses and telephone numbers of the parties are:

#### SELLER:

Honupopo Bay Ranch Estates, LP  
330 Primrose Road, Suite 210  
Burlingame, CA 94010-4026  
Attn: Mark D. Lester, President of Landco,  
A Real Estate Services Corporation, its  
general partner  
Tel: (650) 548-0900  
FAX: (650) 548-1662

#### BUYER:

The Trust for Public Land  
Hawaii Field Office  
212 Merchant Street, Suite 320  
Honolulu, HI 96813  
Attn: Josh Stanbro  
Tel: (808) 524-8560  
FAX: (808) 524-8565

Copies of any notice to Buyer should also  
be sent to:

The Trust for Public Land  
Western Regional Office  
116 New Montgomery Street  
Third Floor  
San Francisco, CA 94105  
Attn: Tily Shue, Esq.  
Tel: (415) 495-5660, ext. 460  
FAX: (415) 495-0541

B. Seller is the owner of approximately 225.48 acres of real property in Hawaii County, Hawaii described in Exhibit A attached to this Agreement, more commonly known as TMK (3) 9-5-14-2, 3, 4, 5, 6, 7, 27, 52, 53, 54, 55, 56, 57, 58 and 59. That real property, together with sellers interest in all improvements, fixtures, timber, water, oil, gas and minerals located in and on it, and all rights appurtenant to it, including but not limited to timber rights, water rights, grazing rights, access rights and oil, gas and mineral rights, will be referred to in this Agreement as the "Property."

C. Buyer intends that the Property be preserved and used eventually for public, open space and recreational purposes. However, Buyer makes no representation that its efforts to secure

eventual government acquisition of the Property will succeed. Seller acknowledges that upon acquisition of the Property, Buyer will be free to use and dispose of the Property in any manner Buyer sees fit and may sell the Property for any price, to any subsequent buyer, provided that the proceeds of any sale are used for Buyer's charitable purposes.

D. Seller acknowledges that Buyer is entering into this Agreement in its own right and that Buyer is not an agent of any governmental agency or entity.

E. Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is included in the "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code" published by the Internal Revenue Service. Buyer is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

#### THE PARTIES AGREE AS FOLLOWS:

##### 1. Option.

1.1 Deposit. In consideration of the payment by Buyer to Seller of Ten Thousand Dollars (\$10,000) and other good and valuable consideration, within ten (10) business days of the Effective Date, Seller grants to Buyer an exclusive and irrevocable option to purchase the Property on the terms stated in this Agreement (the "Option"). The deposit paid above for the Option and any additional deposits (the "Deposit(s)") will be credited toward the purchase price of the Property if Buyer exercises the Option. This Deposit shall be non-refundable to Buyer after June 15, 2005.

1.2 Effective Date and Term. This Agreement will be effective as of the date this Agreement is fully signed by the parties (the "Effective Date"). The Option will terminate at 5:00 p.m. California time on October 30, 2005.

1.3 Exercise. If Buyer chooses to exercise the Option, Buyer will do so by notifying Seller in writing within the term stated in Section 1.2.

1.4 Return of Deposit. Seller will return any Deposit(s) to Buyer if:

- (a) the sale of the Property is not completed because of Seller's failure, refusal or inability to perform any of Seller's obligations under this Agreement;
- (b) Buyer chooses to terminate this Agreement because any of Seller's representations cease to be true, or any of Seller's promises are breached, as appropriate, prior to close of escrow (as stated in Section 7);
- (c) Buyer chooses to terminate this Agreement because Seller is unable to remove a title exception objected to by Buyer (as state in Section 4.3);

(d) Buyer chooses to terminate this Agreement because of condemnation of the Property (as stated in Section 4.7);

(e) Buyer chooses to terminate this Agreement because of unacceptable environmental conditions on the Property (as stated in Section 6.4).

## 2. Purchase Terms.

2.1 Price. If Buyer exercises the Option, Seller will sell the Property to Buyer for a purchase price equal to Three Million Dollars (\$3,000,000.00), or the fair market value of the Property as determined by an appraisal pursuant to Section 2.3 below, whichever is higher (the "Purchase Price").

2.2 Method of Payment. The Purchase Price will be payable in cash on close of escrow after crediting any Deposit(s) paid to the Purchase Price.

2.3 Appraisal. Buyer will contract for a complete, self-contained, written appraisal of the fair market value of the Property ("FMV"), assuming its highest and best use, to be prepared by a State-licensed, MAI appraiser, familiar with state and federal land appraisal standards (the "Appraisal"). Buyer will provide Seller a copy of the Appraisal within five (5) business days of its completion. If said appraisal is not provided to Seller by July 15, 2005, Seller may terminate this Option Agreement. Buyer and Seller shall have ten (10) days from the receipt of the Appraisal to review the Appraisal and to determine whether or not to accept the Appraisal. If either Party seeks to reject the Appraisal, that Party shall provide written notice of the rejection to the other Party within said ten (10) day period. If Seller rejects the Appraisal, then, as a condition of terminating the Option, in addition to the written notice within said ten (10) day period, Seller shall reimburse Buyer for one-half (1/2) the cost of the Appraisal up to a maximum cost of Two Thousand Five Hundred Dollars (\$2,500.00). Upon written notice to the other Party of rejection of the Appraisal, and, in the case of Seller's rejection, reimbursement by Seller to Buyer of one-half (1/2) the cost of the Appraisal, as in this Section above, and Escrow Holder's return of the Deposit to Buyer, then this Agreement shall be terminated and be of no further force or effect. If either Party fails to notify the other Party of its rejection of the Appraisal within said ten (10) day period, then that Party shall be deemed to have approved the Appraisal.

3. Due Diligence. For a period commencing upon the execution hereof and continuing until July 15, 2005 ("Due Diligence Period"), Buyer shall commence such investigations and reviews as Buyer may deem necessary for the purpose of enabling Buyer to determine whether the Property is acceptable to Buyer. Such investigations and reviews may include, but are not limited to, reviews of title exceptions, tests for hazardous materials and soils tests, and review of the documents and materials delivered to Buyer by Seller pursuant to Section 6.7. All of such investigations and reviews by Buyer and the results thereof shall be conducted at the sole risk and expense of Buyer.

4. Title.

4.1 Deed. Seller will convey by deed to Buyer or Buyer's nominee marketable, record, fee simple title to the Property.

4.2 Permitted Exceptions. Title to the Property will be conveyed free and clear of all liens and encumbrances except the following "Permitted Exceptions":

- (a) a lien for nondelinquent real property taxes;
- (b) such title exceptions listed in that certain preliminary title report dated December 3, 2004, issued by Title Guaranty of Hawaii, Inc. that Buyer approves during the Due Diligence Period
- (c) any other matters approved by Buyer in writing.

4.3 Unpermitted Exceptions. Except for the Permitted Exceptions, all exceptions and encumbrances to title will be removed by Seller as "Unpermitted Exceptions" by close of escrow. Seller will use best efforts to remove the Unpermitted Exceptions within 30 days of receiving notice of same. If Seller is unable to remove any Unpermitted Exceptions, Buyer may:

- (a) terminate this Agreement, in which case any Deposit(s) paid by Buyer will promptly be refunded; or
- (b) with respect to Unpermitted Exceptions caused by Seller's action, or omission defer the closing date until such Unpermitted Exceptions are removed; or
- (c) proceed with the purchase of the Property and accept a policy of title insurance containing the Unpermitted Exception(s).

4.4 Possession. Seller will deliver possession of the Property to Buyer at close of escrow, free and clear of anyone in possession.

4.5 Title Insurance. Seller will provide Buyer with an ALTA, with regional exceptions, standard coverage owner's policy of title insurance in the full amount of the Purchase Price insuring that title to the Property is vested in Buyer upon close of escrow subject only to the Permitted Exceptions.

4.6 Seller's Promise Not to Encumber Property. Except as allowed by this Agreement or approved in advance in writing by Buyer, during the term of this Agreement, Seller promises not to:

- (a) make or permit to be made, extend or permit to be extended, any leases, contracts, options or agreements affecting the Property, except for the existing month-to-month cattle grazing lease;
- (b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Property; or
- (c) cause or permit any mortgage, deed of trust or other lien to be foreclosed upon due to Seller's actions or omissions, including failure to make a required payment or failure to obtain any required consent; provided, however, Seller may use the Property as

collateral for its debt obligations during the term of the Option, so long as Seller retains the right to effect the necessary release from the lien-holder no later than the date for Close of Escrow.

4.7 Condemnation. In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to closing, Buyer will have the right, at its option, to terminate this Agreement by written notice to Seller and any Deposit(s) paid by Buyer will promptly be refunded. If Buyer does not terminate the Agreement, then Buyer may either: (a) proceed to close with the Purchase Price reduced by the total of any awards or other proceeds received or to be received by Seller as a result of such proceedings, or (b) proceed to close with an assignment by Seller of all Seller's right, title and interest in and to all such awards and proceeds. Seller will promptly notify Buyer in writing of any eminent domain proceedings affecting the Property.

4.8 Concurrent Condition to Closing. As a concurrent condition to closing, Seller shall donate to the County of Hawaii by Quitclaim Deed that portion of Seller's land comprising approximately 1.01 acres and described as TMK (3) 9-5-14-29.

4.9 Well License Agreement. To the extent permitted by the Well License Agreement recorded as Document No. 2003-268235, Seller shall retain one-third (1/3) of the rights and obligations contained therein. Said rights and obligations shall contain the right of Seller to allocate one third of the water which may be drawn under said Water Agreement to any of the land entitled thereto under the Well License Agreement, under such terms and conditions as Seller determines.

4.10 Easement. Buyer shall grant to Seller an easement over the subject Property for purposes of installing a water line to supply water to the land that Seller sold to Richard E. Alderson and to that portion of the land benefited by the Well License Agreement that Seller is retaining. The easement shall run along the boundaries of the property as shown on a map to be provided by Seller within thirty (30) days after the exercise of the Option in this Agreement and as thereafter reasonably approved by Buyer. The grant of easement document shall be recorded concurrently with the deed from Seller to Buyer of the Property. The easement shall not be less than ten (10) feet wide and provide for reasonable access to the easement for installation and maintenance of waterlines.

## 5. Escrow and Closing.

5.1 Escrow Holder. Upon exercise of the Option, the parties will open an escrow with Title Guaranty Escrow Services, Inc., (the "Escrow Holder") 65-1230 Mamaloa Hwy, Ste D-101, Kamuela, HI 96743, Telephone (808)-887-6020, for the purpose of closing the purchase and sale of the Property. Escrow will close within forty-five (45) days of the date on which Buyer exercises the Option.

5.2 Closing Costs and Prorations.

(a) Seller will pay the following closing costs in accordance with the custom of the County of Hawaii:

- (i) prorated real property taxes as of the close of escrow based upon the latest tax bills;
- (ii) half the escrow fee;
- (iii) the documentary tax or real property transfer tax;
- (iv) Sixty percent (60%) of the premium for the title insurance policy as stated in Section 4.5; and
- (v) any costs of removing Unpermitted Exceptions to title;

(b) Buyer will pay the following closing costs:

- (i) prorated real property taxes as of the close of escrow based upon the latest tax bills;
- (ii) half the escrow fee;
- (iii) Forty percent (40%) of the premium for the title insurance policy as stated in Section 4.5; and
- (iv) recording fees for the deed.

Other fees and charges will be allocated according to custom of the county in which the Property is located.

5.3 Supplemental Taxes. If a supplemental property tax assessment is currently due and payable or becomes due and payable during the term of this Agreement, it will be paid by Seller prior to close of escrow. Seller will also be responsible for paying any supplemental property taxes which are assessed after the date of closing as a result of a sale or construction prior to the close of escrow.

6. Condition of Property.

6.1 Seller's Promise to Maintain Property. During the term of this Agreement, Seller promises not to:

- (a) remove or permit the removal of any vegetation, soil or minerals from the Property or disturb or permit the disturbance of the existing contours and/or other natural features of the Property, except for weed abatement, or
- (b) cause or permit any dumping or depositing of any materials on the Property, including, without limitation, garbage, Hazardous Substances, construction debris or solid or liquid wastes of any kind.

Seller agrees to deliver the Property at the close of escrow in the same order and condition as on the Effective Date of this Agreement, except as otherwise provided in this Agreement.



6.2 Seller's Promise to Remove Personal Property. Prior to close of escrow, Seller promises to remove from the Property at Seller's expense all personal property and/or trash or any other unsightly or offensive materials, including but not limited to, any Hazardous Substance in tanks, barrels, equipment, pipelines or other containers on the Property, which Seller has placed on the Property or that Seller is aware of and which is not disclosed in the environmental report previously provided to Buyer unless otherwise agreed to in writing by Buyer. Satisfaction of this promise will be subject to Buyer's inspection and approval of the physical condition of the Property prior to the expiration of the due diligence period and prior to the close of escrow.

6.3 Right to Inspect Property. During the Due Diligence Period, Buyer, through its employees and agents, may enter upon the Property to conduct such inspections, tests, and investigations as Buyer thinks appropriate, including, without limitation, making an environmental assessment of the soils, waters and improvements on the Property at Buyer's cost and expense.

6.4 Unacceptable Environmental Conditions. During the Due Diligence Period, should Buyer determine, in its sole discretion, based on its investigation of the Property, that the environmental conditions on the Property are unacceptable, Buyer may choose to terminate this Agreement on or before July 15, 2005, in which case any Deposit(s) paid by Buyer will promptly be refunded, or Buyer may notify Seller of the unacceptable environmental conditions and Seller will be obligated to use best efforts to remedy the unacceptable environmental conditions by the close of escrow. Seller's plans to remedy unacceptable environmental conditions must be approved by Buyer before being carried out. If Seller is unable to remedy any unacceptable conditions by close of escrow, Buyer may terminate this Agreement by providing written notice to Seller on or before the close of escrow.

6.5 Disclosure. Buyer may disclose to any prospective purchaser of the Property, and to any court or government agency pursuant to a court order or government directive, any information, including environmental assessment reports, Buyer obtains through its investigations and inspections of the Property.

6.6 Risk of Loss. All risk of loss will remain with Seller until closing. If the Property is destroyed or damaged prior to close of escrow, Buyer may terminate this Agreement, in which case any Deposit(s) paid by Buyer will promptly be refunded.

6.7 Review of Property Information and Seller's Information. Within thirty (30) calendar days of the Effective Date, Seller will disclose to Buyer to the best of Seller's knowledge any and all unrecorded permits, entitlements, approvals, leases, licenses, easements, or other agreements of any kind that may affect the Property now or in the future, whether oral or in writing. If the item is in writing, Seller will provide Buyer with an original or copy thereof, together with originals or copies of all maps, surveys, records, reports or other material in Seller's possession, custody, or control affecting the Property. If Buyer does not purchase the Property, Buyer shall return to Seller all original documents provided to it by Seller pursuant to this section.

6.8. Acknowledgement of Property Information Received. Buyer acknowledges receipt of the documents listed in Exhibit D.

7. Seller's Representations and Warranties. Seller represents and warrants the following:

7.1 Seller has full power and authority to enter into this Agreement and the persons signing this Agreement for Seller if Seller is not an individual have full power and authority to sign for Seller and to bind it to this Agreement and to sell, transfer and convey all right, title and interest in and to the Property in accordance with this Agreement. Along with the documents and information provided under Section 5.7, Seller shall provide Buyer the following: a) a certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2); b) a full copy of the partnership agreement and any amendments; c) satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction; and d) such other documentation the Escrow Holder shall reasonably require.

7.2 The conveyance of the Property in accordance with this Agreement will not violate any provision of state or local subdivision laws.

7.3 The Property may be accessed by means of a public road.

7.4 To the best of Seller's knowledge, there is no tenant or occupant in possession of any part of the Property

7.5 To the best of Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or pending or threatened against Seller, or any general partner of Seller or any general partner of a partnership which is a partner of Seller, which could affect Seller's title to the Property, authority to convey the Property, affect the value of the Property, or subject an owner of the Property to liability.

7.6 Seller is not insolvent and has no intention of filing for protection under the bankruptcy laws of the United States.

7.7 There are no encumbrances or liens against the Property, including, but not limited to, mortgages or deeds of trust, except as stated in the Title Report and Seller is not in default of any obligation under any mortgage or deed of trust affecting the Property.

7.8 There is no lease, license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property.

7.9 To the best of Seller's knowledge, there are no encroachments by third parties on the Property and Seller does not encroach upon the property of any third party.

7.10 Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Property is subject, including any deed of trust and/or mortgage.

7.11 To the best of Seller's knowledge, there are no and have been no:

(a) Actual or impending public improvements or private rights or actions which will result in the creation of any liens upon the Property, including public assessments or mechanics liens;

(b) Uncured notices from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property; or

(c) Notices or other information giving Seller reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property may have a material effect on the value of the Property or subject the owner of the Property to potential liability under environmental laws.

7.12 There has been no transfer of title or construction of improvements on the Property for which a supplemental property tax assessment has not been levied and paid.

7.13 To the best of Seller's knowledge, except as shown on the Hutchinson Sugar Plantation Co. Plan Showing Honuapo Landing & Surroundings, drawn by T. Koike dated May 15, 1929, and in Phase I Environmental Assessment Report dated June 19, 2000, prepared by J.R. Herrold & Associates for Seller, there is no and has been no:

(a) condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law;

(b) production, use, treatment, storage, transportation, or disposal of any Hazardous Substance on the Property;

(c) release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or surface water at the Property or within the immediate vicinity of the Property;

(d) Hazardous Substance, now or ever, stored on the Property in underground tanks, pits or ponds;

(e) asbestos-containing material incorporated into any buildings or interior improvements or equipment that may be part of the Property or other assets to be transferred under this Agreement;

(f) electrical transformer or other item containing PCB's on the Property or among the assets to be transferred under this Agreement.

(i) The term "Hazardous Substance(s)" means any substance which is (1) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, (2) a petroleum hydrocarbon, including crude oil or any fraction thereof, (3) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive

toxicant, (4) regulated pursuant to any Environmental Law(s), or (5) any pesticide regulated under state or federal law.

(ii) The term "Environmental Law(s)" means each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety or the environment.

7.14 To the best of Seller's knowledge, Seller is in compliance with all laws and regulations in connection with any handling, use, transportation, storage or disposal of Hazardous Substances, including the maintenance of all required permits and approvals.

8. **Reliance.** All Seller's representations, warranties and promises made in this Agreement, ("Representations", "Warranties" and "Promises") are material and are relied upon by Buyer. All Representations, Promises and Warranties will be considered to have been made or affirmed as of the close of escrow and will survive the close of escrow.

If, before the Close of Escrow, Seller discovers any information or facts that would materially change the accuracy of the Representations and/or Warranties and/or performance of the Promises, Seller will immediately give written notice to Buyer of those facts and information. If any Representation ceases to be true during the term of this Agreement or Seller has breached any Warranty or Promise, Seller will promptly remedy the problem, at Seller's sole cost and expense, upon receipt of notice by Buyer. If the problem is not remedied before Close of Escrow, Buyer may choose to terminate this Agreement, in which case the Deposit paid by Buyer will promptly be refunded. Buyer's choice in this regard will not constitute a waiver of Buyer's rights with respect to any loss or liability suffered as a result of a Representation not being true or a Warranty or Promise having been breached, nor will it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

9. **Remedies Upon Default.** If Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. If Buyer defaults in the performance of any of its obligations under this Agreement, Seller will have the right to retain any Deposit(s) without thereby waiving Seller's right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.

10. **Indemnification.** Seller will indemnify, defend with counsel of Buyer's choice and hold harmless Buyer, its officers, directors, employees and agents, from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of any misrepresentation by Seller and/or Seller's breach of any Warranty or Promise. The provisions of this Section 9 will survive the close of escrow.

## 11. Miscellaneous Terms.

11.1 Notices. All notices required or permitted under this Agreement will be in writing and delivered to the parties by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses stated in Recital A. All notices will be considered given: (a) if sent by mail, when deposited in the mail, first class postage prepaid, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice will be given.

11.2 Legal Costs. If any legal action is brought by either Seller or Buyer to enforce any provision of this Agreement or is based upon any matter arising out of or related in any way to this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs and all expenses of litigation, whether or not authorized by statute as costs, in such amounts as will be allowed by the court.

11.3 No Broker's Commission. Except for J. David Richardson of RE/MAX Pacific-Waimea, who represents Seller solely, each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. If any person asserts a claim for a broker's commission or finder's fee against one of the parties, the party on account of whose actions the claim is asserted will indemnify and hold the other party harmless from and against the claim. The indemnification obligation will survive the close of escrow or earlier termination of this Agreement.

11.4 Time of the Essence; Dates. Time is of the essence of this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, that date will be considered to be the succeeding day on which public agencies and major banks are open for business.

11.5 Binding on Successors. This Agreement will be binding not only on the parties but also on their respective successors and assigns.

11.6 Memorandum of Option. When signing this Agreement, Seller will also sign a Memorandum of Option in the form of Exhibit B attached to this Agreement. Buyer will record the Memorandum of Option. If Buyer does not exercise the Option within the term of this Agreement, Buyer will, if requested to do so by Seller, deliver upon demand a quitclaim deed in a form suitable for recording covering the Property so as to eliminate any cloud on Seller's title to the Property.

11.7 Additional Documents. Seller and Buyer agree to sign such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

11.8 Non-Foreign Certificate. When signing this Agreement, Seller will also sign a Non-Foreign Certificate in the form of Exhibit C attached to this Agreement. Seller acknowledges that if Seller is unable to certify that it is not a "foreign person," Buyer may be required to withhold a portion of the purchase price at closing for U.S. income tax purposes.

11.9 Entire Agreement. This Agreement is the entire agreement between the parties about the Property and supersedes all prior and contemporaneous agreements, representations, and understandings.

11.10 Interpretation. This Agreement will be interpreted without regard to any presumption or other rule of interpretation based on who drafted the Agreement.

11.11 Amendment. No amendment of this Agreement will be binding unless in writing and signed by the parties.

11.12 Waiver. No waiver of any term of this Agreement will be considered a waiver of any other term, whether or not similar, nor will any waiver be considered a continuing waiver. No waiver will be binding unless in writing and signed by the party making the waiver.

11.13 Assignment of Buyer's Interest. Buyer may assign its interest in this Agreement to an organization or entity that is a qualified organization at the time of transfer under Section 170(b) of the Internal Revenue Code of 1986 and applicable regulations.

11.14 Severability. Each term of this Agreement is severable from any and all other terms of this Agreement. Should any term of this Agreement be for any reason unenforceable, the balance will still be of full force and effect.

11.15 No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance of title to the Property, placing any deeds of trust on the Property and delivery of money and documents in the escrow), will not merge with transfer of title but will remain in effect until fulfilled.

11.16 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Hawaii.

11.17 Confidentiality. The parties agree that the terms of this Agreement, including but not limited to the Purchase Price, will remain confidential, and that, unless compelled by law, copies of this Agreement will not be provided to anyone other than the parties or their respective attorneys, employees or representatives without the consent of the other party.

11.18 Exhibits. All Exhibits attached to this Agreement are incorporated into this Agreement by this reference.

11.19 Counterparts. This Agreement may be signed in counterparts, each of which will be considered an original and which together will constitute one and the same agreement.

11.20 Expiration. This Agreement will be of no force or effect, and will be null and void, unless an original of this Agreement, signed by Seller, is received by Buyer no later than June \_\_, 2005.

11.21 Press Release. Seller shall have the opportunity to review any press releases proposed by Buyer and approve statements which refer specifically to the landowner before said press release is made.

11.22 Upon exercise of the Option in this Agreement, Buyer will cooperate with Richard Alderson in any reasonable request for the implementation of Seller's obligations described in the Agreement attached hereto and incorporated by reference herein as Exhibit E. Buyer will not be required to expend funds, incur any adverse change in its position or interests, or advocate any positions with regard to the above. IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

HONUPO BAY RANCH ESTATES,  
LP, a California limited partnership

By LANDCO, A Real Estate Services  
Corporation, Its General Partner

By: Mark D. Lester  
Title: President

Date: 5/27/05

BUYER:

THE TRUST FOR PUBLIC LAND, a  
California nonprofit public benefit  
corporation

By: Shuetily

Title: Director, Hawaiian Islands Prog

Date: 6/1/05

## EXHIBIT A

### Legal Description of Property

#### -ITEM I:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 7049, Land Commission Award 8559-B, Apana 13 to Wm. C. Lunailo (Certificate of Boundaries no. 74)) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 2, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the west corner of this parcel of land, being also along the southeast side of Hawaii Belt Road (F.A.G.H. 18-D(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 18, 686.15 feet south and 11,913.93 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
| 1. | 215° | 30' | 40" | 493.77 | feet along the southeast side of Hawaii belt Road (F.A.G.H. 18-D(1));  |
| 2. | 305° | 32' | 40" | 288.26 | feet along Lot 1, being a portion of R. P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74); |
| 3. | 33°  | 13' | 40" | 503.42 | feet along Lot 1, being a portion of R. P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74); |
| 4. | 127° | 15' | 40" | 308.46 | feet along Lot 1, being a portion of R. P. 7049, L.C.  |



Aw. 8559-B, Ap. 13  
to Wm. C. Lunaililo  
(Certificate of  
Boundaries No. 74)  
to the point of  
beginning and  
containing an area  
of 3.412 acres,  
more or less.

-ITEM II:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7049, Land Commission Award number 8559-B, Apana 13 to Wm. C. Lunaililo) situate, lying and being at Honuapo, District of Ka'u, Island and County of Hawaii, State of Hawaii, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at a spike in pavement at the north corner of this parcel at the north corner of this parcel of land and on the south side of Government Triangulation Station "HILL" being 19,038.78 feet south and 12,165.69 feet west and running by azimuths measured clockwise from true South:

- |    |      |     |     |        |  |
|----|------|-----|-----|--------|--|
| 1. | 305° | 39' | 20" | 187.49 | feet along remainder of Land Commission Award Number 8559-B, Apana 13 to W. C. Lunaililo to a 3/4" pipe; |
| 2. | 27°  | 56' |     | 142.86 | feet along same to a 3/4" inch pipe;   |
| 3. | 118° | 46' | 40" | 185.99 | feet along same to a 3/4" inch pipe;   |
| 4. | 205° | 56' | 20" | 129.23 | feet along south side of a Government Road from Honuapo Wharf to a spike in pavement;                    |
| 5. | 215° | 30' | 40" | 36.43  | feet along south side of Government Main Road to the   |

point of beginning  
and containing an  
area of 29,029  
square feet or  
0.666 acre, more  
or less.

-ITEM III:-

All of those certain parcels of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7049, Land Commission Award 8559-B, Apana 13 to Wm. C. Lunaililo) situate, lying and being at Honuapo, District of Ka'u, Island and Count of Hawaii, State of Hawaii, being LOTS 1, 4 and 5, and thus bounded and described as per survey dated June 13, 2003, to-wit:

LOT 1

Beginning at the northwest corner of this parcel of land, being also the west corner of a Government Beach Trail (15 feet wide) and along the southeast side of Hawaii Belt Road (F.A.P. 18-C(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 17,465.12 feet south and 11,042.62 feet west and thence running by azimuths measured clockwise from true South:

- |    |          |          |  |
|----|----------|----------|--|
| 1. | 246° 47' | 463.09   | feet along a Government Beach Trail (15 feet wide);  |
| 2. | 259° 00' | 10.98    | feet along Lot 14, being a portion of Grant 2693 to Napahi & Kaanana-ana;                              |
| 3. | 309° 00' | 402.65   | feet along Lot 14, being a portion of Grant 2693 to Napahi and Kaanana-ana;                            |
| 4. | 295° 30' | 1,259.58 | feet along Lot 15, being a portion of Grant 3151 to Kahanu and Lot 16, being a portion of Grant 826 to |

Kelii;

Thence along the seaward boundary along the highwater mark as evidenced by edge of vegetation and/or edge of sand as located on May 11, 2002 for the next eighteen (18) courses, the direct azimuth and distance between points along said highwater mark being:

5.	28°	03'	289.00	feet;
6.	77°	38'	203.00	feet;
7.	31°	00'	1,457.00	feet;
8.	12°	00'	735.00	feet;
9.	333°	00'	147.00	feet;
10.	50°	00'	224.00	feet;
11.	86°	00'	482.00	feet;
12.	80°	00'	392.00	feet;
13.	66°	00'	229.00	feet;
14.	335°	00'	89.00	feet;
15.	63°	00'	72.00	feet;
16.	133°	00'	95.00	feet;
17.	222°	00'	286.00	feet;
18.	147°	00'	291.00	feet;
19.	74°	00'	234.00	feet;
20.	140°	00'	92.00	feet;
21.	55°	00'	176.00	feet;
22.	91°	16'	86.08	feet;

23.	102°	00'		147.60	feet along the southwest side of an Old Government Road;
24.	172°	08'	30"	16.47	feet along Lot 5, being a portion of R. P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunaililo (Certificate of Boundaries No. 74);
25.	82°	08'	30"	45.61	feet along Lot 5, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunaililo (Certificate of Boundaries No. 74);
26.	102°	00'		80.57	feet along the southwest side of an Old Government Road;
27.	172°	08'	30"	63.58	feet along Lot 4, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunaililo (certificate of Boundaries No. 74);
28.	82°	08'	30"	72.00	feet along Lot 4, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunaililo (Certificate of Boundaries No. 74);
29.	352°	08'	30"	33.85	feet along Lot 4, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunaililo

(Certificate of  
Boundaries No.  
74);

30. Thence along the west side of an Old Government Road, on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:
- |      |     |     |        |       |
|------|-----|-----|--------|-------|
| 131° | 52' | 59" | 216.16 | feet; |
|------|-----|-----|--------|-------|
31. 153° 00' 80.00 feet along the west side of an Old Government Road;
32. Thence along the northwest side of an Old Government Road, on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being:
- |      |     |  |        |       |
|------|-----|--|--------|-------|
| 176° | 30' |  | 159.50 | feet; |
|------|-----|--|--------|-------|
33. 200° 00' 100.00 feet along the northwest side of an Old Government Road;
34. Thence along the northwest side of an Old Government Road, on a curve to the right with a radius of 200.00 feet, the chord azimuth and distance being:
- |      |     |  |        |       |
|------|-----|--|--------|-------|
| 216° | 30' |  | 113.61 | feet; |
|------|-----|--|--------|-------|
35. Thence along the northwest side of an Old Government Road, on a curve to the left with a radius of 200.00 feet,

					the chord azimuth and distance being:
	220°	00'		89.98	feet;
36.	207°	00'		358.00	feet along the northeast side of an Old Government Road;
37.	205°	56'	20"	320.00	feet along the northeast side of an Old Government Road;
38.	298°	46'	40"	185.99	feet along the remainder of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunalilo (Certificate of Boundaries No. 74);
39.	207°	56'		142.86	feet along the remainder of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunalilo (Certificate of Boundaries No. 74);
40.	125°	39'	20"	187.34	feet along the remainder of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunalilo (Certificate of Boundaries No. 74);
41.	215°	30'	40"	432.92	feet along the southeast side of Hawaii Belt Road (F.A.G.H. 18- D91));
42.	307°	15'	40"	308.46	feet along Lot 2, being portions of R.P. 7049, L.C.

					Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
43.	213°	13'	40"	503.42	feet along Lot 2, being portions of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
44.	125°	32'	40"	288.26	feet along Lot 2, being portions of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
45.	215°	30'	40"	1,006.27	feet along the southeast side of Hawaii Belt Road (F.A.G.H. 18-D(1)) and (F.A.P. 18- C(1)) to the point of beginning and containing an area of Gross Area of 147.72 acres, more or less and a Net Area of 144.93 acres, more or less, after deducting the following:

#### Exclusion 1

Being all of Royal Patent 7106, Land Commission Award  
10516, Apana 1 to Nahakuelua

Beginning at the north corner of this exclusion, the  
coordinates of said point of beginning referred to  
Government Survey Triangulation Station "HILL" being  
19,481.43 feet south and 112,145.77 feet west and thence  
running by azimuths measured clockwise from true South:

1.	306°	45'	88.44	feet;
2.	53°	30'	113.90	feet;
3.	138°	00'	82.54	feet;
4.	232°	00'	96.36	feet to the point of beginning and containing an area of 0.20 acre, more or less.

#### Exclusion 2

Being all of Land Patent S-8678, Land Commission Award 10008, Apana 2 to Lepoloa

Beginning at the north corner of this exclusion, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 19,694.85 feet south and 11,989.97 feet west and thence running by azimuths measured clockwise from true South:

1.	327°	15'	97.87	feet;
2.	40°	30'	110.88	feet;
3.	142°	45'	128.70	feet;
4.	236°	30'	116.28	feet to the point of beginning and containing an area of 0.29 acre, more or less.

#### Exclusion 3

Being all of Royal Patent 7298, Land Commission Award 9564-B, Apana 1 to Kalaukoa

Beginning at the north corner of this exclusion, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 19,806.21 feet south and 1,570.76 feet west and thence running by azimuths measured clockwise from true South:

1.	322°	44'	122.93	feet;
2.	54°	4'	140.36	feet along



Exclusion 4, being  
all of the L.P. S-  
8677, L.C. Aw.  
9212:1 to Hoolapa;

3.	140°	29'	151.80	feet;
4.	245°	14	149.82	feet to the point of beginning and containing an area of 0.45 acre, more or less.

#### Exclusion 4

Being all of Land Patent S-8677, Land Commission Award  
9212, Apana 1 to Hoolapa

Beginning at the north corner of this exclusion, the  
coordinates of said point of beginning referred to  
Government Survey Triangulation Station "HILL" being  
19,904.05 feet south and 11,496.32 feet west and thence  
running by azimuths measured clockwise from true South:

1.	314°	14'	133.22	feet;
2.	48°	59'	146.35	feet;
3.	137°	14'	145.67	feet;
4.	234°	14'	140.36	feet along Exclusion 3, being all of R.P. 7298, L.C. Aw. 9564-B:1 to Kalaukoa to the point of beginning and containing an area of 0.46 acre, more or less.

#### Exclusion 5

Being all of School Grant 5, Apana 8

Beginning at the north corner of this exclusion, the  
coordinates of said point of beginning referred to  
Government Survey Triangulation Station "HILL" being  
19,420.92 feet south and 11,504.48 feet west and thence  
running by azimuths measured clockwise from true South:

- |    |      |     |     |        |   |
|----|------|-----|-----|--------|---|
| 1. | 326° | 04' | 30" | 180.18 | feet;   |
| 2. | 50°  | 49' |     | 168.96 | feet;   |
| 3. | 146° | 36' |     | 217.14 | feet;   |
| 4. | 243° | 26' |     | 167.64 | feet to the point<br>of beginning and<br>containing an area<br>of 0.76 acre, more<br>or less. |

#### Exclusion 6

Being all of Royal Patent 6112, Land Commission Award  
9955-B, Apana 1 to Lilikalani

Beginning at the west corner of this exclusion, the  
coordinates of said point of beginning referred to  
Government Survey Triangulation Station "HILL" being  
20,316.52 feet south and 12,627.44 feet west and thence  
running by azimuths measured clockwise from true South:

- |    |      |     |        |       |
|----|------|-----|--------|-------|
| 1. | 227° | 30' | 270.00 | feet; |
|----|------|-----|--------|-------|

Boundary follows along edge of fish pond as locked  
on May 11, 2002,  
for the next two  
(2) courses, the  
direct azimuths  
and distances  
between points  
along said fish  
pond being:

- |    |      |     |        |   |
|----|------|-----|--------|---|
| 2. | 353° | 55' | 49.00  | feet;   |
| 3. | 330° | 38' | 105.00 | feet;   |
| 4. | 56°  | 30' | 179.00 | feet;   |
| 5. | 118° | 00' | 120.60 | feet to the point<br>of beginning and<br>containing an area<br>of 0.63 acre, more<br>or less. |

#### LOT 4

Beginning at the southeast corner of this parcel of  
land, being also along the south side of an Old

Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 20,439.80 feet south and 12,422.86 feet west and thence running by azimuths measured clockwise from true South:

1. 102° 00' 32.10 feet along the south side of an Old Government Road;
2. Thence along the south side of an Old Government Road, on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:  
 106° 22' 59" 45.85 feet;
3. 172° 08' 30" 33.85 feet along Lot 1, being a portion of R. P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
4. 262° 08' 30" 72.00 feet along Lot 1, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
5. 352° 08' 30" 63.58 feet along Lot 1, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74) to the point of beginning and containing an area of 0.082 acre, more or less.

# LOT 5

Beginning at the southeast corner of this parcel of land, being also along the south side of an Old Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 20,466.63 feet south and 12,296.61 feet west and thence running by azimuths measured clockwise from true South:

1. 102° 00' 48.50 feet along the south side of an Old Government Road;
2. 262° 08' 30" 45.61 feet along Lot 1, being a portion of R.P. L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);
3. 352° 08' 30" 16.47 feet along Lot 1, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (certificate of Boundaries No. 74) to the point of beginning and containing an area of 0.009 acre, more or less.

## -ITEM IV:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2693 to Napahi and Kaanana-Ana) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 10, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the northwest corner of this parcel of land, being also along the southeast side of Hawaii Belt Road (F.A.P. 18-C(1)), the coordinates of said point of

beginning referred to Government Survey Triangulation Station "HILL" being 15,966.66 feet south and 9,973.34 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |     |     |          |  |
|----|------|-----|-----|----------|--|
| 1. | 291° | 22' | 30" | 428.90   | feet along the Government Lands of Hionaa;   |
| 2. | 27°  | 00' |     | 1,172.87 | feet along Lot 11, being a portion of Grant 3151 to Kahanu;  |
| 3. | 79°  | 00' |     | 524.68   | feet along a Government Beach Trail (15 feet wide);  |
| 4. | 129° | 00' |     | 228.83   | feet along Lot 13, being a portion of R. P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunailo (Certificate of Boundaries No. 74);                    |
| 5. | 215° | 30' | 40" | 1,421.95 | feet along the southeast side of Hawaii Belt Road (F.A.P. 18-C(1)) to the point of beginning and containing an area of 16.424 acres, more or less. |

-ITEM V:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 3151 to Kahanu) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 11, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the east corner of this parcel of land, being also along the south side along the Government Lands of Hionaa, the coordinates of said point of

beginning referred to Government Survey Triangulation Station "HILL" being 16,426.54 feet south and 8,937.74 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |         |          |  |
|----|------|---------|----------|--|
| 1. | 27°  | 00'     | 640.69   | feet along Lot 12, being a portion of Grant 826 to Kelii;  |
| 2. | 79°  | 00'     | 894.24   | feet along a Government Beach Trail (15 feet wide);  |
| 3. | 207° | 00'     | 1,172.87 | feet along Lot 10, being a portion of Grant 2693 to Napahi and Kaanana-ana;  |
| 4. | 295° | 30' 27" | 704.91   | feet along the Government Land of Hionaa to the point of beginning and containing an area of 14.669 acres, more or less. |

-ITEM VI:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 826 to Kelii) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 12, and thus bounded and described as per survey dated June 13, 2004, to-wit:

Beginning at the northwest corner of this parcel of land, being the east corner of Lot 11, being a portion of Grant 3151 to kahanu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 16,426.54 feet south and 8,937.74 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |     |        |  |
|----|------|-----|--------|--|
| 1. | 265° | 00' | 942.00 | feet along the Government Lands of Hionaa; |
|----|------|-----|--------|--|

2. Thence along the seaward boundary along the highwater mark as evidenced by edge of vegetation and/or edge of sand as located on May 11, 2002, the direct azimuth and distance being:
- |    |          |        |   |
|----|----------|--------|---|
|    | 14° 35'  | 260.00 | feet;   |
| 3. | 81° 53'  | 110.00 | feet along a Government Beach Trail (15 feet wide);   |
| 4. | 52° 09'  | 553.00 | feet along a Government Beach Trail (15 feet wide);   |
| 5. | 85° 42'  | 620.00 | feet along a Government Beach Trail (15 feet wide);   |
| 6. | 207° 00' | 640.69 | feet along Lot 11, being a portion of Grant 3151 to Kahanu to the point of beginning and containing an area of 10.82 acres, more or less. |

-ITEM VII:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7049, Land Commission Award 8559-B, Apana 13 to Wm. C. Lunalilo (Certificate of Boundaries No. 74)) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 13, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the north corner of this parcel of land,

being also along the southwest corner of Lot 10, being a portion of Grant 2693 to Napahi and Kaanana-ana and along the south side of Hawaii Belt Road (F.A.P. 18-C(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 17,441.58 feet south and 11,025.82 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |         |        |   |
|----|------|---------|--------|---|
| 1. | 309° | 00'     | 228.83 | feet along Lot 10, being a portion of Grant 2693 to Napahi and Kaanana-ana;   |
| 2. | 66°  | 47'     | 440.00 | feet along a Government Beach Trail (15 feet wide);   |
| 3. | 215° | 30' 40" | 390.00 | feet along the southeast side of Hawaii Belt Road (F.A.P. 18-C(1)) to the point of beginning and containing an area of 1.022 acres, more or less. |

-ITEM VIII:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 2693 to Napahi and Kaanana-ana) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 14, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the south corner of this parcel of land, being also along the west corner of Lot 15, being a portion of Grant 3151 to Kahanu, the coordinates of said point of beginning and referred to Government Survey Triangulation Station "HILL" being 17,533.86 feet south and 10,293.34 feet west and thence running by azimuths measured clockwise from true South:

- |    |      |     |        |   |
|----|------|-----|--------|---|
| 1. | 129° | 00' | 402.65 | feet along Lot 1, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 |
|----|------|-----|--------|---|



to Wm. C. Lunailo  
(Certificate of  
Boundaries no.  
74);

- |    |          |        |   |
|----|----------|--------|---|
| 2. | 259° 00' | 499.80 | feet along a<br>Government Beach<br>Trail (15 feet<br>wide);  |
| 3. | 27° 00'  | 391.42 | feet along Lot 15,<br>being a portion of<br>Grant 3151 to<br>Kahanu to the<br>point of beginning<br>and containing an<br>area of 1.770<br>acres, more or<br>less. |

-ITEM IX:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3151 to Kahanu) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 15, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the south corner of this parcel of land, being also the west corner of Lot 16, being a portion of Grant 826 to Kelii, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 17,837.50 feet south and 9,656.75 feet west and thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 115° 30' | 705.36 | feet along Lot 1,<br>being a portion of<br>R.P. 7049, L.C.<br>Aw. 8559-B, Ap. 13<br>to Wm. C. Lunailo<br>(Certificate of<br>Boundaries No.<br>74); |
| 2. | 207° 00' | 391.42 | feet along Lot 14,<br>being a portion of<br>Grant 2693 to  |

Napahi and  
Kaanana-ana;

- |    |          |        |   |
|----|----------|--------|---|
| 3. | 259° 00' | 894.82 | feet along<br>Government Beach<br>Trail (15 feet<br>wide);  |
| 4. | 27° 00'  | 923.86 | feet along Lot 16,<br>being a portion of<br>Grant 826 to Kelii<br>to the point of<br>beginning and<br>containing an area<br>of 10.645 acres,<br>more or less. |

-ITEM X:-

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 826 to Kelii) situate, lying and being at Honuapo, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 16, and thus bounded and described as per survey dated June 13, 2003, to-wit:

Beginning at the west corner of this parcel of land, being also the south corner of Lot 15, being a portion of Grant 3151 to Kahanu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HILL" being 17,837.50 feet south and 9,656.75 feet west and thence running by azimuths measured clockwise from true South:

- |    |          |        |  |
|----|----------|--------|--|
| 1. | 207° 00' | 923.86 | feet along Lot 15,<br>being a portion of<br>Grant 3151 to<br>Kahanu; |
| 2. | 259° 00' | 10.84  | feet along a<br>Government Beach<br>Trail (15 feet<br>wide);         |
| 3. | 265° 42' | 623.65 | feet along a<br>Government Beach<br>Trail (15 feet<br>wide);         |

- |    |          |        |   |
|----|----------|--------|---|
| 4. | 232° 09' | 553.54 | feet along a Government Beach Trail (15 feet wide); |
| 5. | 261° 53' | 103.77 | feet along a Government Beach Trail (15 feet wide); |

Thence along the seaward boundary along the highwater mark as evidences by edge of vegetation and/or edge of sand as located on May 11, 2002 for the next five (5) courses, the direct azimuth and distance between points along said highway mark being:

- |     |          |        |  |
|-----|----------|--------|--|
| 6.  | 9° 58'   | 73.40  | feet;  |
| 7.  | 29° 00'  | 424.00 | feet;  |
| 8.  | 46° 57'  | 388.00 | feet;  |
| 9.  | 75° 28'  | 122.00 | feet;  |
| 10. | 33° 00'  | 866.00 | feet;  |
| 11. | 115° 30' | 554.22 | feet along Lot 1, being a portion of R.P. 7049, L.C. Aw. 8559-B, Ap. 13 to Wm. C. Lunalilo (certificate of Boundaries No. 74) to the point of beginning and containing an area of 18.92 acres, more or less. |

-AS TO ITEMS I THRU X, INCLUSIVE:-

Together with non-exclusive easements over and across

the Easement area for access and utility purposes, as granted by EASEMENT FOR INGRESS, EGRESS AND TRANSMISSION LINE dated December 1, 2003, recorded as Document No. 2003-268236, said Easement Area being more particularly described therein and described in Exhibit "A" attached thereto; subject, however, to the terms and provisions, including the failure to comply with any covenants, conditions and reservations contained therein.

-NOTE:- Said Easement Area is not contiguous to the land described herein. Title Guaranty of Hawaii, Inc. is unable to insure said easement.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : LANDCO, a California corporation  
GRANTEE : HONUPO BAY RANCH ESTATES LP, a  
California limited partnership  
DATED : June 21, 2004  
RECORDED : Document No. 2004-134649

END OF LEGAL DESCRIPTION

**EXHIBIT B**

When recorded mail to:

THE TRUST FOR PUBLIC LAND  
116 New Montgomery Street  
Third Floor  
San Francisco, CA 94105  
Attn: Legal Dept.

**MEMORANDUM OF OPTION**

This is a memorandum of a certain Option Agreement dated \_\_\_\_\_, 2005, between **HONUPO BAY RANCH ESTATES, LP**, a California limited partnership (collectively, "Seller"), and **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation ("Buyer"). By said Option Agreement Seller has granted to Buyer an exclusive option to purchase that certain real property Hawaii County, Hawaii, described in Exhibit A attached hereto.

Said option extends until October 30, 2005.

**SELLER:**

**HONUPO BAY RANCH ESTATES, LP**, a California limited partnership

By **LANDCO, A Real Estate Services Corporation**, Its General Partner

By: \_\_\_\_\_

Mark D. Lester

Title: Its President

Date: \_\_\_\_\_

**BUYER:**

**THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

County of ( )

instrument.

My commission expires \_\_\_\_\_



EXHIBIT C

NON—FOREIGN-CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a buyer of a U.S. real property interest must withhold tax if the seller is a foreign person. To inform the buyer that withholding of tax is not required upon the disposition of a U.S. real property interest by **HONUPO BAY RANCH ESTATES, LP**, a California corporation, the undersigned hereby certifies the following on behalf of **HONUPO BAY RANCH ESTATES, LP**, a California corporation.

- 1 **HONUPO BAY RANCH ESTATES, LP**, a California corporation, is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
- 1 **HONUPO BAY RANCH ESTATES, LP**, a California corporation's, U.S. employer identification number is 35-2225470; and
- 1 **HONUPO BAY RANCH ESTATES, LP**, a California corporation's, office address is:

330 Primrose Road, Suite 210  
Burlingame, CA 94010

I understand that this certification may be disclosed to the Internal Revenue Service by the buyer and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of **HONUPO BAY RANCH ESTATES, LP**, a California corporation.

**HONUPO BAY RANCH ESTATES, LP**, a California limited partnership

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**Property Information Received**



- 1) Seller's Real Property Disclosure for Vacant Land dated September 16, 2004
- 2) A Letter and map from the State of Hawaii Land and Natural Resources dated April 30, 2004 giving the Conservation District and Subzone Determination
- 3) Exhibit D to Land Sale Contract dated April 29, 2000 describing the water well agreement
- 4) Manager's Revocable License regarding the lease of Whittington Park area by the County of Hawaii executed by Kau Agribusiness on July 31, 1992 and by the County of Hawaii on December 4, 1992
- 5) Agreement made March 9, 1977 between Kau Sugar Company and the U.S. Dept. of Commerce, NOAA and the National Weather Service
- 6) An Indenture dated October 23, 1962 between Hutchison Sugar Company, Ltd., and HELCO for utility line easement
- 7) Archaeological Inventory Survey dated August 2000 and prepared by Haun and Associates. This has been updated and submitted to the Hawaii SHPD in October 2004
- 8) Preliminary Report on the Archaeological Survey of Coastal Areas of Honu'apo. Hiona'a and Hokukano Ahupua'a, Kau, Hawaii, prepared by William Ayres conducted March 16 to 27, 1970 and dated June 1, 1970
- 9) FEMA Flood Zone Map
- 10) A Letter dated March 7, 2003 and stamped on April 29, 2004 from Kau Agribusiness Co. Inc., to Mr. Stanley Tamura, District Engineer, State of Hawaii, Department of Transportation
- 11) An Agreement between Kau Agribusiness and State of Hawaii Dept. of Transportation executed March 11, 2003 by Kau Agribusiness and April 21, 2003 by Stanley Tamura regarding easement under Belt Hwy.
- 12) Fax dated November 18, 2002 of Permit #958 from State of Hawaii Dept. of Transportation
- 13) Fax Memo dated September 17, 2004 from Mark Fox attached to a Draft copy of the July 2000 Environmental Site Assessment for the Honu'apo property
- 14) 2004 Landco Sale to Alderson: PCRS related contract addendum
- 15) Letter dated February 22, 2005 from the State of Hawaii Dept. of Land and Natural

Resources certifying the Shoreline Survey Map prepared by RM Towill and a copy of the Certified Shoreline Survey Map

- 16) Letter from the County Planning Department dated July 5, 2000 giving a Determination of Pre-existing Lots of Record
- 17) Hawaii In-Depth Studies, Hawaiian Fishpond Study dated September 1990
- 18) Boundary Survey Map prepared by Russell Figueiroa of RM Towill and Associates
- 19) May 25, 1929 map showing Honuapo Landing & Surroundings prepared for Hutchinson Sugar Plantation Co.
- 20) Letter transmittal from Hawaii Dept. of Land and Natural Resources dated May 3, 2005 of signed Shoreline Survey Maps.

**EXHIBIT E**

Addendum to DROA (reference date 2/11/04)

LIST OF ENCUMBRANCES  
EXHIBIT C (Warranty Deed)  
Exhibit D (Agreement of Sale)

Tax Map Key: (3)9-5-014:006 as to ITEM I.  
Tax Map Key: (3)9-5-014:007, Lots 1, 4 and 5 as to ITEM II.  
Tax Map Key: (3)9-5-014:053, 054, 055, 056, 057, 058, & 059 as to ITEM III.  
Tax Map Key: (3)9-5-014:002 as to ITEM IV.  
Tax Map Key: (3)9-5-014-027 as to ITEM V.  
Tax Map Key: (3)9-5-014-003 as to ITEM VI.  
Tax Map Key: (3)9-5-014-004 as to ITEM VII.  
Tax Map Key: (3)9-5-014-005 as to ITEM VIII.  
Tax Map Key: (3)9-5-014-052 as to ITEM IX.

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

3. Discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

4. AS TO ITEM I:

GRANT  
TO : HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation  
DATED : March 5, 2003  
RECORDED : Document No. 2003-281359  
GRANTING : a perpetual right and easement for utility purposes being more particularly described therein.

5. AS TO ITEM II:

(A) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

(B) As to Lot 1 only, Triangulation Survey Station "HONUPO NEW" located within the land described herein, as shown on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, County of Hawaii. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or

**EXHIBIT "D"**

removal of survey monuments.

(C) GRANT

TO : Honu'apo Bay Ranch Estates, LP, a California  
limited partnership

RECORDED :

GRANTING : an easement to install and thereafter use,  
maintain, repair and restore water and utility lines as  
described and depicted in Exhibits \_ and \_

6. AS TO ITEMS I AND II:

(A) INSTRUMENT: LIMITED WARRANTY DEED

DATED : July 1, 2004

RECORDED : Document No. 2004-134649

(B) INSTRUMENT: RELEASE OF RESTRICTIONS

DATED :

RECORDED :

Said Release cancels indemnification obligations in  
Document No. 2004-134649

7. AS TO ITEMS I, II, AND IV THROUGH IX:

(A) INSTRUMENT : LIMITED WARRANTY DEED WITH RESTRICTIONS

DATED : November 21, 2003

RECORDED : Document No. 2003-268233

Said Deed was corrected by Correction Limited Warranty Deed  
with Restrictions dated August 24, 2005, recorded as  
Document No. 2005-213387

(B) INSTRUMENT : PARTIAL RELEASE OF RESTRICTIONS

DATED :

RECORDED :

Said Release cancels indemnification obligations in  
Document No. 2003-268233 and Document No. 2005-213387

8. AS TO ITEM III:

As to Tax Map Key (3)9-5-014:055 & 059 only, location of  
the seaward boundary in accordance with the laws of the  
State of Hawaii and shoreline setback line in accordance  
with County regulation and/or ordinance and the effect, if  
any, upon the area of the land described herein.

9. AS TO ITEMS IV through IX:

GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE  
HAWAIIAN TELEPHONE COMPANY INCORPORATED (now known as  
HAWAIIAN TELCOM, INC.)

DATED : September 9, 1996

RECORDED : Document No. 96-152139  
GRANTING : a nonexclusive perpetual easement for utility  
purposes as shown on the map attached thereto

10. AS TO ITEM V:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8678  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

11. AS TO ITEM VII:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8677  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

## AGREEMENT OF SALE

(Honu'apo Bay Property  
Hawai'i County, Hawai'i)

This is an Agreement of Sale ("Agreement") dated \_\_\_\_\_, 2005, between **The Trust for Public Land**, a California nonprofit public benefit corporation, whose address is 116 New Montgomery, 3rd Floor, San Francisco, California 94105 ("Seller"), and the **State of Hawai'i** by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("Buyer").

### RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

#### SELLER:

The Trust for Public Land  
116 New Montgomery, 3rd Floor  
San Francisco, CA 94105  
Attn: Brian R. Kirchoff  
Tel: (415) 495-5660  
FAX: (415) 495-0541

#### BUYER:

State of Hawaii  
Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809-0621  
Attn: Peter Young, Director  
Tel: (808) 808-587-0405  
FAX: (808) 808-587-0390

Copies of any notice to Seller should also be sent to:

The Trust for Public Land  
212 Merchant Street, Suite 320  
Honolulu, HI 96813  
Attn: Joshua Stanbro  
Tel: (808) 524-8560  
FAX: (808) 566-0005

Copies of any notice to Buyer should also be sent to:

State of Hawaii  
Dept. of Land and Natural Resources  
Land Division  
1151 Punchbowl Street, Room 220  
Honolulu, Hawaii 96813  
Attn: Gavin Chun  
Tel: (808) 808-587-0385  
FAX: (808) 808-587-0455

B. Prior to the Close of Escrow, Seller will be the owner of certain real property situate at Honuapo, Kau, Island of Hawaii, Hawaii, Tax Map Key Nos. (3)9-5-14:002, 003, 004, 005, 006, 007, 027, 052, 053, 054, 055, 056, 057, 058, and 059, described in Exhibit A and delineated in Exhibit B both attached to this Agreement and incorporated herein by this reference which, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to it, including but not limited to timber rights, water rights, grazing rights, access rights, and geothermal rights, if any, will be referred to in this Agreement as the "Property."

C. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

(a) **Price.** The purchase price for the Property shall be Three Million Two Hundred Thirty Two Thousand Three Hundred Sixty Seven Dollars (\$3,232,367.00) (the "Purchase Price").

(b) **Method of Payment.** The Purchase Price shall be payable on Close of Escrow, as defined in Section 6.

(c) **Effective Date.** This Agreement shall be effective on the date that it is signed by both parties hereto (the "Effective Date").

3. **Conditions Precedent to Closing.** The parties' respective obligations to close the purchase and sale of the Property shall be conditioned upon all of the following:

(a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller's Board of Directors which approval by said Board of this Agreement is subject to said Board's sole discretion;

(b) Buyer's approval of the title, physical, structural and environmental condition of the Property not later than December 9, 2005 (the "Review Deadline");

(c) Seller's prior acquisition of the Property;

(d) County of Hawaii's confirmation of approval and either: (i) the receipt or (ii) the direct deposit of such funds with Escrow Holder by such funder, of a grant from the State Land and Water Conservation Fund in the amount of Two Hundred Sixty Seven Thousand Six Hundred Thirty Two Dollars (\$267,632.00), County of Hawaii's appropriation of said amount to Buyer, and Buyer's receipt of authorization to expend said amount by February 28, 2006, which funds are to be used for acquisition of the Property and shall be deposited prior to the deposit of those funds described in Section 3 (f) and (i) below;

(e) Buyer's confirmation of approval and either: (i) the receipt or (ii) the direct deposit of such funds with Escrow Holder by such funder, of an appropriation from the County of Hawaii in the amount of Five Hundred Thousand Dollars (\$500,000.00) and Buyer's receipt of authorization to expend said amount by February 28, 2006, which funds are to be used for acquisition of the Property and shall be deposited prior to the deposit of those funds described in



Section 3 (f) and (i) below;

(f) Buyer's approval and receipt of a grant from the National Oceanic Administrative Agency ("NOAA") in the amount of One Million Four Hundred Sixty Four Thousand Seven Hundred Thirty Five Dollars (\$1,464,735.00) and Buyer's receipt of authorization to expend said amount by February 28, 2006, which funds are to be used for acquisition of the Property;

(g) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources to acquire the property, which approval is subject to the Board's discretion;

(h) Seller removes the Well License Agreement between Ka'u Agribusiness Co., Inc. and Landco dated December 1, 2003, and recorded with the State of Hawaii Bureau of Conveyances as Doc No 2003-268235, and terminates (1) the Easement for Ingress, Egress and Transmission Line between Ka'u Agribusiness Co., Inc. and Landco dated December 1, 2003, and recorded with the State of Hawaii Bureau of Conveyances as Doc No 2003-268236 and (2) the Covenants on Certain Easement Rights and Appurtenant Rights Under Well License Agreement dated June 21, 2004, and recorded with the State of Hawaii Bureau of Conveyances as Doc 2004-134651 as encumbrances upon the Property prior to the Close of Escrow as defined in Section 6;

(i) Seller executes and records in the Bureau of Conveyances of the State of Hawaii (1) a release of restrictions contained within the Limited Warranty Deed dated June 21, 2004, recorded July 1, 2004 in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-134649 and Deed dated October 11, 2005, recorded October 21, 2005 as Document Number 2005-214374; and (2) a partial release of restrictions contained within the Limited Warranty Deed with Restrictions dated November 21, 2003, recorded December 5, 2003 in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-268233 and Correction Limited Warranty Deed with Restrictions dated August 29, 2005, recorded October 20, 2005 as Document Number 2005-213387, all to the satisfaction of the Buyer and prior to the Close of Escrow as defined in Section 6;

(j) The Governor of the State of Hawaii releases One Million Dollars (\$1,000,000.00) in CIP funds appropriated for the acquisition of the Property as authorized by Act 178, SLH 2005, Item K-6; and

(k) Satisfaction of all the obligations stated herein by both Buyer and Seller, within the time periods provided in this Agreement (if any).

If any condition precedent is not satisfied or waived by both parties, Seller or Buyer may terminate this Agreement by written notice to the other party, in which event the Parties shall have no further obligation to each other under this Agreement.

4. Condition of the Property.

(a) Buyer and Seller agree that, prior to the Review Deadline, as defined in Section 3(b):

(i) Buyer shall have had the opportunity to study all aspects or circumstances of the Property, which Buyer deems material or relevant;

(ii) Buyer shall have received from Seller the documents described in Exhibit C attached hereto which sets forth the Property related information (the "Property Information");

(iii) Buyer shall have had access to the Property; and

(iv) Buyer shall have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Seller agrees to indemnify, defend, and hold Buyer harmless, from any damages and claims resulting from the release of hazardous materials on the Property occurring to the extent Seller was in possession of the Property, between the effective date of the Option Agreement between Seller and Honuapo Bay Ranch Estates, LP, a California limited partnership and the Close of Escrow as defined in Section 6, or any time occurring if caused by Seller or persons acting through or under Seller.

For purposes of this Agreement "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

(c) Except as otherwise expressly provided herein or in the warranty deed, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent or employee of Seller has made, or will make, and except for Seller's express warranties set forth in this Agreement or in the warranty deed, Seller specifically negates and disclaims, any representations, warranties or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property.

5. **Due Diligence.** Buyer shall have the opportunity to investigate and review the Title Report, the Property Information, and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline, as defined in Section 3(b). If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Close of Escrow. If Buyer fails to deliver any such written termination notice to Seller on or before the Close of Escrow, then Buyer shall be deemed to have elected to proceed to close escrow and acquire the Property.

6. **Escrow.** Seller has opened an escrow with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawai'i, 96813 Attn: Barbara Paulo (the "Escrow Holder") for the purpose of closing the purchase and sale of the Property. Escrow instructions will be approved by both Buyer and Seller. All escrow fees shall be paid for by Seller. Escrow shall close on or before March 30, 2006 (the "Close of Escrow").

7. **Title.** Seller shall convey to Buyer by warranty deed (the "Warranty Deed") a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except as shown in Exhibit D.

8. **Title Insurance.** Seller will provide an ALTA, standard coverage, owner's policy of title insurance in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer upon Close of Escrow subject only to the exceptions noted in Section 7. The cost of such title insurance shall be paid for by Seller.

9. **Seller's Promise not to Further Encumber.** Seller shall not, without the prior written consent of Buyer make or allow to be made any leases, contracts, options or agreements whatsoever affecting the Property which would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

10. **Seller's Representations.** Seller represents and warrants that::

(a) Seller will no later than the Close of Escrow own and will have the power to sell, transfer and convey all right, title and interest in and to the Property.

(b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration or other proceeding pending or threatened, which in any manner affects the Property.

(c) Seller has full power and authority to execute and deliver this Agreement, and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement.

(d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation or policy of insurance affecting the Property.

(e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property.

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 3. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which it is bound.

(g) Except for the unrecorded Landco-Alderson DROA Addendum (Addendum to Landco-Alderson DROA dated August 2, 2005, Seller has no actual knowledge of any unrecorded agreements affecting the Property other than as described in Section 7.

(h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333.

(i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of the State of California.

(j) Seller represents and warrants, to Seller's actual knowledge, without further inquiry, that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims.

(k) Seller agrees to disclose to Buyer all material findings in respect to the condition of the Property that Seller may discover which findings are not contained in the Title Report delivered to Buyer.

11. **Buyer's Representation.** Buyer represents and warrants that subject to approval by the Board of Land and Natural Resources which approval is at the Board's discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

12. **Risk of Loss.** All risk of loss shall remain with Seller until Close of Escrow. In the event the Property is destroyed or damaged after the Effective Date of this Agreement and prior to Close of Escrow, Buyer or Seller may, at their option, elect to terminate this Agreement with no damages accountable to Buyer.

13. **Closing Expenses and Fees.** Seller shall pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property shall be borne by Seller, if applicable. Any other closing expenses, fees and charges shall be paid for by Seller.

14. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepaid, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

15. **Remedies Upon Default.** In the event Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, Seller or Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity have the right of specific performance against the defaulting party.
16. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.
17. **Time of the Essence; Dates.** Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.
18. **Binding on Successors.** Subject to approval by the Board of Land and Natural Resources which approval is at the Board's discretion, this Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.
19. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.
20. **Additional Documents to be Provided by Seller to Buyer.** Seller agrees to provide the following documents to Buyer prior to the Close of Escrow:
- (a) **Resolution.** A certified resolution of the Board of Directors of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.
- (b) **Certificate of Good Standing.** A certificate of good standing of Seller certified by the proper governmental authority in the State of California.
21. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.
22. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver

constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.

23. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

24. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

25. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

26. **Survival of Close of Escrow**. All representations, warranties, covenants, conditions, agreements and other obligations set forth in this Agreement shall survive the close of escrow and the recordation of the Warranty Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

**THE TRUST FOR PUBLIC LAND**, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2005

BUYER:

STATE OF HAWAII

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

Date: \_\_\_\_\_, 2005

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_, 2005

Add a notary page for Seller.

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**



**EXHIBIT B**

**DELINEATION OF THE PROPERTY**

## EXHIBIT C

### DOCUMENTS PROVIDED TO BUYER

1. Letter and map from State of Hawaii Land and Natural Resources dated April 30, 2004 giving the Conservation District and Subzone Determination;
2. Manager's Revocable License regarding the lease of Whittington Park area by County of Hawaii executed by Kau Agribusiness on July 31, 1992 and by the County of Hawaii on December 4, 1992;
3. Agreement made March 8, 1977 between Kau Sugar Company and the US Department of Commerce, NOAA and the National Weather Service;
4. Indenture dated October 23, 1962 between Hutchinson Sugar Company, Ltd and HELCO for utility line easement;
5. Archeological Inventory Survey dated August 2000 and prepared by Haun and Associates. This has been updated and submitted to the Hawaii SHPD in 10/04;
6. Preliminary Report on the Archeological Survey of Coastal Areas of Honu'apo, Hiona'a and Hokuano Ahupua'a, Kau, Hawaii prepared by William Ayres, conducted March 16 to 27, 1970 and dated June 1, 1970;
7. FEMA Flood Zone Map;
8. Letter dated March 7, 2003 and stamped on April 29, 2003 from Kau Agribusiness Co., Inc. to Mr. Stanley Tamura, District Engineer, State of Hawaii, Dept. of Transportation;
9. An Agreement between Kau Agribusiness and State of Hawaii Dept. of Transportation executed March 11, 2003 by Kau Agribusiness and 4/21/03 by Stanley Tamura regarding easement under Belt Hwy;
10. Fax dated 11/18/02 of Permit #958 from State of Hawaii DOT;
11. Fax memo dated Sept. 17, 2004 from Mark Foxx attached to a draft copy of the July 2000 Environmental Site Assessment for the Honuapo property;
12. 2004 Landco Sale to Alderderson: PCRS related contract addendum;
13. Letter dated February 22, 2005 from the State of Hawaii DLNR certifying the Shoreline Survey Map prepared by RM Towill, and a copy of the Certified Shoreline Survey Map;
14. Letter from the County Planning Department dated July 5, 2000 giving a Determination of Pre-existing Lots of Record.
15. Hawaii In-Dept Studies, Hawaiian Fishpond Study dated Sept. 1990
16. Boundary Survey Map prepared by Russell Figueiroa of R.M. Towill land Associates;
17. Phase 1 Environmental Site Assessment Report on Honuapo Parcel TMK Nos. 9-5-014:002-:007, :027 and :052-:059, Kau District, Hawaii, prepared by Walker Consultants;
18. Well license Agreement dated December 1, 2003 between Kau Agribusiness Co., Inc. and Landco;
19. Easement for Ingress, Egress and Transmission Line, dated December 1, 2003 between Kau Agribusiness Co., Inc., and Landco;
20. Grant of Easement, dated March 5, 2003 between Kau Agribusiness Co., Inc. and Hawaii Electric Light Company, Inc.;
21. Plan for Hutchinson Sugar Plantation Co.;
22. Warranty Deed for Honuapo Bay Ranch filed July 1, 2004;
23. Limited Warranty Deed with Restrictions, filed December 5, 2003;

24. Limited Warranty Deed filed July 1, 2004;
25. Covenants on Certain Easement Rights and Appurtenant Rights Under Well License Agreement filed July 1, 2004;
26. Property Appraisal for Honuapu Property, prepared by Hallstrom Group;
27. Preliminary Title Report Numbers 200534760, 200534760A and 200534760B dated June 23, 2005 issued by Title Guaranty of Hawaii, Inc.;
28. Option Agreement between Honuapo Bay Ranch Estates, LP and The Trust for Public Land dated May 27, 2005;
29. First Amendment to Option Agreement between Honuapo Bay Ranch Estates, LP and The Trust for Public Land dated August 2, 2005;
30. Second Amendment to Option Agreement between Honuapo Bay Ranch Estates, LP and The Trust for Public Land, which has not yet been signed by the parties.
31. Preliminary Title Report No. 200534760, dated October 20, 2005, issued by Title Guaranty of Hawaii, Inc, which covers TMK Nos. (3) 9-5-14-6, 7, 53, 54, 55, 56, 57, 58, and 59;
32. Preliminary Title Report No. 200534760a, dated October 21, 2005, issued by Title Guaranty of Hawaii, Inc, which covers TMK Nos. (3) 9-5-14-2, 3, 4, 5, 27 and 52.
33. Utility Easement between Ka'u Agribusiness Co., Inc (Grantor) and Hawaii Electric Light Company and GTE Hawaiian Telephone Co. (Grantee), dated September 9, 1996;
34. Land Patent No. S-8678 dated December 21, 2001;
35. Land Patent No. S-8677 dated December 21, 2001;

**EXHIBIT D**  
**ENCUMBRANCES**

Tax Map Key: (3)9-5-014:006 as to ITEM I.  
Tax Map Key: (3)9-5-014:007, Lots 1, 4 and 5 as to ITEM II.  
Tax Map Key: (3)9-5-014:053, 054, 055, 056, 057, 058, & 059 as to ITEM III.  
Tax Map Key: (3)9-5-014:002 as to ITEM IV.  
Tax Map Key: (3)9-5-014-027 as to ITEM V.  
Tax Map Key: (3)9-5-014-003 as to ITEM VI.  
Tax Map Key: (3)9-5-014-004 as to ITEM VII.  
Tax Map Key: (3)9-5-014-005 as to ITEM VIII.  
Tax Map Key: (3)9-5-014-052 as to ITEM IX.

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. Discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

4. AS TO ITEM I:

GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation

DATED : March 5, 2003

RECORDED : Document No. 2003-281359

GRANTING : a perpetual right and easement for utility purposes being more particularly described therein.

5. AS TO ITEM II:

(A) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

(B) As to Lot 1 only, Triangulation Survey Station "HONUAPPO NEW" located within the land described herein, as shown on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, County of Hawaii. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.

(C) GRANT

TO : Honu'apo Bay Ranch Estates, LP, a California limited partnership

RECORDED :

GRANTING : an easement to install and thereafter use, maintain, repair and restore water and utility lines as described and depicted in Exhibits E and F

6. AS TO ITEMS I AND II:

(A) INSTRUMENT: LIMITED WARRANTY DEED  
DATED : July 1, 2004  
RECORDED : Document No. 2004-134649

(B) INSTRUMENT: RELEASE OF RESTRICTIONS  
DATED :  
RECORDED :  
Said Release cancels indemnification obligations in Document No. 2004-134649

7. AS TO ITEMS I, II, AND IV THROUGH IX:

(A) INSTRUMENT : LIMITED WARRANTY DEED WITH RESTRICTIONS  
DATED : November 21, 2003  
RECORDED : Document No. 2003-268233  
Said Deed was corrected by Correction Limited Warranty Deed with Restrictions dated August 24, 2005, recorded as Document No. 2005-213387

(B) INSTRUMENT : PARTIAL RELEASE OF RESTRICTIONS  
DATED :  
RECORDED :  
Said Release cancels indemnification obligations in Document No. 2003-268233 and Document No. 2005-213387

8. AS TO ITEM III:

As to Tax Map Key (3)9-5-014:055 & 059 only, location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

9. AS TO ITEMS IV through IX:

GRANT  
TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN  
TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.)  
DATED : September 9, 1996  
RECORDED : Document No. 96-152139  
GRANTING : a nonexclusive perpetual easement for utility purposes as shown on the map attached thereto

10. AS TO ITEM V:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8678  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

11. AS TO ITEM VII:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8677  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

**EXHIBIT E**

**WATER LINE EASEMENT**

**EXHIBIT F**

**DEPICTION OF WATER LINE EASEMENTS**



	Total Number of Pages:
LOD No.	Tax Map Key Nos. (3) 9-5-014:002, 003, 004, 005, 006, 007, 027, 052, 053, 054, 055, 056, 057, 058 & 059

KNOW ALL MEN BY THESE PRESENTS:

corporation, whose address is \_\_\_\_\_, hereinafter referred to as the "Grantor," for and in consideration of the sum of THREE MILLION TWO HUNDRED THIRTY TWO THOUSAND THREE HUNDRED SIXTY SEVEN AND NO/100 DOLLARS (\$3,232,367.00), paid by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, the Grantee's successors and assigns, those certain parcels of land situate at Honuapo, Kau, Island of Hawaii, Hawaii, designated as "\_\_\_\_\_ containing an area of \_\_\_\_\_,

Warranty Deed 11-30-05 (clean)

EXHIBIT 44 F 99

exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. \_\_\_\_\_ and dated \_\_\_\_\_.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as described in Exhibit "C" attached hereto and made part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as described in Exhibit "C" attached hereto and made part hereof and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

The Grantor shall be responsible for payment of all rollback or retroactive property taxes and their associated costs, and property taxes up to the date of execution of this Warranty Deed.

AND, the Grantee covenants that this purchase of real property has had prior approval by the Attorney General pursuant to section 26-7 and section 107-10, Hawaii Revised Statutes as to legality and form, exceptions, and reservations.

AND, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

AND, Grantor agrees to indemnify, defend, and hold Buyer harmless, from any damages and claims resulting from the

release of hazardous materials on the Property occurring to the extent Grantor was in possession of the Property, between the effective date of the Option Agreement between Grantor and Honuapo Bay Ranch Estates, LP, a California limited partnership and the Close of Escrow as defined in paragraph 6. of the Agreement of Sale, or any time occurring if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

AND, Grantor shall conduct a Phase I environmental site assessment no later than thirty days before the effective date of this deed, and then conduct any and all abatement and disposal, as warranted by that Phase I environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion.

This property has been acquired with funds from a federal financial assistance award. Title of the property conveyed by this deed shall vest in the State of Hawaii, by its Board of Land and Natural Resources, subject to disposition instructions from National Oceanic and Atmospheric Administration ("NOAA") or its successor agencies. The property shall be managed for conservation purposes and consistent with the purposes for which it was entered into the Coastal Estuarine Land Conservation Program. The State of Hawaii, by its Board of Land and Natural Resources, shall not dispose of, encumber its title or other interests in, or convert the use of this property without the approval of NOAA or its successor agencies.

IN WITNESS WHEREOF, the parties have executed this instrument as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a  
California nonprofit corporation

Approved by the Board of  
Land and Natural Resources  
at its meeting held on  
\_\_\_\_\_.

By \_\_\_\_\_

Its \_\_\_\_\_

And By \_\_\_\_\_

Its \_\_\_\_\_

GRANTOR

APPROVED AS TO LEGALITY  
AND FORM:

STATE OF HAWAII

\_\_\_\_\_  
Deputy Attorney General

By \_\_\_\_\_

Chairperson  
Board of Land and  
Natural Resources

Dated: \_\_\_\_\_

GRANTEE

STATE OF

)

) SS.

)

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known,  
who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ and \_\_\_\_\_,  
respectively, of THE TRUST FOR PUBLIC LAND, a California  
nonprofit corporation, and that said instrument was signed in  
behalf of said corporation by authority of its Board of  
Directors, and the said \_\_\_\_\_  
and \_\_\_\_\_ acknowledged said  
instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, State of

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF

)

) SS.

)

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn or affirmed, did  
say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B**

**DELINEATION OF THE PROPERTY**

**EXHIBIT C**  
**ENCUMBRANCES**

Tax Map Key: (3)9-5-014:006 as to ITEM I.  
Tax Map Key: (3)9-5-014:007, Lots 1, 4 and 5 as to ITEM II.  
Tax Map Key: (3)9-5-014:053, 054, 055, 056, 057, 058, & 059 as to ITEM III.  
Tax Map Key: (3)9-5-014:002 as to ITEM IV.  
Tax Map Key: (3)9-5-014-027 as to ITEM V.  
Tax Map Key: (3)9-5-014-003 as to ITEM VI.  
Tax Map Key: (3)9-5-014-004 as to ITEM VII.  
Tax Map Key: (3)9-5-014-005 as to ITEM VIII.  
Tax Map Key: (3)9-5-014-052 as to ITEM IX.

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. Discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
4. AS TO ITEM I:

GRANT  
TO : HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation  
DATED : March 5, 2003  
RECORDED : Document No. 2003-281359  
GRANTING : a perpetual right and easement for utility purposes being more particularly described therein.

5. AS TO ITEM II:

- (A) Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
- (B) As to Lot 1 only, Triangulation Survey Station "HONUAPPO NEW" located within the land described herein, as shown on the Tax Map prepared by the Taxation Maps Bureau, Department of Finance, County of Hawaii. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.
- (C) GRANT  
TO : Honu'apo Bay Ranch Estates, LP, a California limited partnership  
RECORDED :



GRANTING : an easement to install and thereafter use, maintain, repair and restore water and utility lines as described and depicted in Exhibits D and E

6. AS TO ITEMS I AND II:

(A) INSTRUMENT: LIMITED WARRANTY DEED  
DATED : July 1, 2004  
RECORDED : Document No. 2004-134649

(B) INSTRUMENT: RELEASE OF RESTRICTIONS  
DATED :  
RECORDED :  
Said Release cancels indemnification obligations in Document No. 2004-134649

7. AS TO ITEMS I, II, AND IV THROUGH IX:

(A) INSTRUMENT : LIMITED WARRANTY DEED WITH RESTRICTIONS  
DATED : November 21, 2003  
RECORDED : Document No. 2003-268233  
Said Deed was corrected by Correction Limited Warranty Deed with Restrictions dated August 24, 2005, recorded as Document No. 2005-213387

(B) INSTRUMENT : PARTIAL RELEASE OF RESTRICTIONS  
DATED :  
RECORDED :  
Said Release cancels indemnification obligations in Document No. 2003-268233 and Document No. 2005-213387

8. AS TO ITEM III:

As to Tax Map Key (3)9-5-014:055 & 059 only, location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

9. AS TO ITEMS IV through IX:

GRANT  
TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE HAWAIIAN  
TELEPHONE COMPANY INCORPORATED (now known as HAWAIIAN TELCOM, INC.)  
DATED : September 9, 1996  
RECORDED : Document No. 96-152139  
GRANTING : a nonexclusive perpetual easement for utility purposes as shown on the map attached thereto

10. AS TO ITEM V:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8678  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

11. AS TO ITEM VII:

The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : LAND PATENT NUMBER S-8677  
DATED : December 7, 2001

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

**EXHIBIT D**

**WATER LINE EASEMENT**

**EXHIBIT E**

**DEPICTION OF WATER LINE EASEMENTS**